

INSTRUCTIONS FOR CONDUCTING A VIDEO HEARING

Due to the compelling circumstances created by the COVID-19 pandemic, the Administrative Law Judge (“ALJ”) will conduct the hearing in this matter using the videoconferencing platform Zoom for Government. The following instructions are for the attorneys and/or representatives conducting the video hearing, which the ALJ may amend or modify. There are separate instructions for witnesses participating in the video hearing. Please provide those instructions to your witnesses well in advance of the hearing.

Before the Video Hearing

Zoom and Necessary Equipment

All participants will need a Zoom account. To create a free Zoom account, visit <https://zoom.us>. If you will be using a computer or laptop, you also must download and install Zoom Client. This is done by hovering over the “Resources” tab on the top right of the Zoom.us website and selecting “Download Zoom Client.” If you will be using a tablet or smartphone you must download and install Zoom from the App Store. Your Zoom profile must consist solely of your first and last name.

In addition to having Zoom, you must also have access to (1) a strong, stable, and secure internet connection, and (2) a device you can use to participate in the Zoom hearing by both audio *and* video. The device must allow you to send, receive and review electronic documents in accordance with the instructions set forth below. You are strongly recommended to use a computer or laptop with a microphone, a speaker, and a web camera. In the alternative, you may use a smartphone or tablet, but you likely will need a second device to handle documents while remaining visible during the hearing. Regardless of the device(s) you use, we recommend using a headset or earphones with a microphone to help reduce feedback and background noise.

You are responsible for ensuring your witnesses have the equipment and internet access necessary to participate by video and audio in the hearing. Any issues must be brought to the ALJ’s attention as soon as possible.

It is highly recommended that you practice using Zoom with your witnesses before the hearing, particularly with the handling of exhibits.

Invitation to Video Hearing

Approximately a week before the hearing, the ALJ will provide you with an email invitation to attend the video hearing. The invitation will contain a link to “Join ZoomGov Meeting” and a “Meeting ID” and “Password” that you can use to participate in the video hearing. Do not share or forward the email invitation. Attached to the email invitation will be a PDF document for your participants and witnesses on how to access the video hearing.

For security reasons, only identified participants and non-participants will be admitted into the video hearing. Each party must provide the ALJ, *and only the ALJ*, with a list of its intended participants (i.e., attorneys, paralegals, representatives, and witnesses), including their name, Zoom profile name, email address, telephone number, and expected role in the hearing, 48 hours before the scheduled start of the hearing. Each party may supplement or revise their participant list during the hearing.

Non-participants seeking to observe the video hearing must contact the Regional Office and provide their full name, Zoom profile name, email address, and telephone number 48 hours before the scheduled start of the hearing, and the Regional Office will provide them with how to access the video hearing. The Regional Office will provide the ALJ with a list of the identified non-participants at least 24 hours before the scheduled start of the hearing.

Non-participants must remain muted with their video output off during the hearing. They may not disrupt the hearing in any way. If a non-participant disrupts the hearing, or violates the ALJ’s rules, they may be subject to removal and other sanctions.

Hearing Preparation

Before the hearing, please take the following steps:

1. Set up the device(s) you will be using for the hearing in a well-lit and quiet room with no distractions;
2. Make sure the device remains steady and position the web camera at or slightly above eye level;
3. Test your equipment and internet connection (<http://zoom.us/test>) HAVE A BACKUP PLAN!
4. Close out and avoid running unnecessary applications besides Zoom during the hearing;
5. To the extent possible, limit the other devices connected to the internet/wifi service during the hearing;
6. Mute sounds from other applications (e.g., email notifications, chat messaging, etc.); and
7. Plug your device into a good power source.

Joining the Hearing

Join the video hearing at least 5 minutes before the time you are asked to testify. You can join by clicking the “Join ZoomGov Meeting” link in the invitation or clicking “Join a Meeting” in Zoom and entering the “Meeting ID” and “Password.” If you receive a message asking whether to open Zoom in the browser or in the Zoom app, select the Zoom app. Select “Join by Computer Audio,” even if you are connecting via smartphone or tablet.

When you join the Zoom hearing, you will first see that you are in a Zoom “Waiting Room.” Do not disconnect from the Waiting Room. The ALJ will receive a message that you are in the Waiting Room, and the ALJ will bring you into the video hearing.

The video hearing is an official court proceeding. Approach it with the same level of respect you would an in-person proceeding in a courthouse. Dress appropriately and use appropriate language.

Your video should be on when you join the video hearing, and it must remain on throughout. If your audio is on “Mute,” as indicated by a microphone symbol with a slash mark at the bottom of your device screen, then no one will be able to hear you when you speak during the hearing. You may “Unmute” yourself by clicking on the microphone symbol one time, which will remove the slash mark on the microphone symbol and allow everyone to hear when you testify. Please mute yourself when you are not speaking.

During the Hearing

The court reporter is the only person authorized to record the hearing. You may not record, duplicate, photograph, or save any audio, video or image from the proceeding, including conferences or sidebars.

Due to a possible lag in the audio or visual connection, make sure to pause before speaking to avoid having multiple people speaking at the same time. Do not talk over another person.

No one may communicate privately with a witness while they are testifying.

If you experience technological issues during the hearing, please notify the ALJ immediately.

Exhibits

You should discuss with the other counsel/representatives and, to the extent possible, agree to joint exhibits and/or factual stipulations on relevant, undisputed matters. The joint exhibits must be marked, converted to one PDF document with bookmarks, and distributed to the parties, the court reporter, and the ALJ in advance of the hearing.

You must pre-mark exhibits. You may save each document as a separate pdf file, or you may create a single pdf file with bookmarks that allow the reader to select each individual exhibit. Please identify each exhibit with initials identifying the party presenting the document and the exhibit number (e.g., “GC Exh. __,” “CP Exh. __,” or “R.

Exh. ____”) and a brief description of the document (e.g., “2017-2020 Collective-Bargaining Agreement”, “November 21, 2019 Warning Issued to John Smith,” or “January 2, 2020 Information Request.”)

You must clearly paginate or (e.g., “Page ____ of ____.”) or Bates Stamp all exhibits.

You must redact all personally identifying information other than names (e.g., social security number, date of birth, address, telephone number, etc.) BEFORE proffering a document or sharing the document on the screen.

It is **STRONGLY** recommended that you email counsel/representatives, the court reporter, the ALJ, and the witness with the exhibits you intend to use *prior to your examination of the witness*, except those that may be used to refresh recollection or impeach.

You may use the “Share Screen” function to show an exhibit to a witness. But before doing so, you must email or otherwise distribute the exhibit to all counsel/representatives, the court reporter, and the ALJ. You may not present an exhibit through the “Chat” function without the ALJ’s permission.

You must confirm the court reporter has each exhibit you proffered into evidence, whether received or rejected.

ATTACHMENT A

PROCEDURAL GUIDELINES FOR VIDEO HEARINGS

TECHNOLOGY:

Requirements

All participants (i.e., attorneys, representatives, and witnesses) must use a: (1) a computer, laptop, tablet, or smartphone able to run the “Zoom” videoconferencing platform; (2) a connected webcam/camera and a microphone; and (3) a reliable, high-speed internet connection. Smartphones and tablets only may be used with a headset or earbuds with a microphone, and the device must remain stationary during testimony. A computer or laptop with audio/video capability is highly recommended. A second option is to use a smart phone or tablet to access the video-hearing and a second electronic device to view documents, if possible.

It is recommended that participants have a Zoom (free) account tied to the email address they provide to counsel so their profile, with their first and last name, appears when they join the video hearing.

Test your connection and setup prior to the hearing at <https://zoom.us/test>

The following are links to resources to familiarize yourself with the Zoom basics (Right Click and “Open Hyperlink”):

General Overview

<https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-Tutorials>

Join a Meeting:

<https://support.zoom.us/hc/en-us/articles/201362193>

Testing Audio and Video:

<https://support.zoom.us/hc/en-us/articles/201362283-Testing-computer-or-device-audio>

Audio Echo (Feedback):

<https://support.zoom.us/hc/en-us/articles/202050538-Audio-Echo-In-A-Meeting>

Sharing a Screen/Document through Zoom:

<https://support.zoom.us/hc/en-us/articles/201362633-How-Do-I-Start-A-Screen-Share-Meeting->

Using Virtual Backgrounds link below; sample backgrounds option 1 & option 2:

https://support.zoom.us/hc/en-us/articles/210707503-Virtual-Background#h_bebf36a4-c1e9-4769-9d3c-e0d01457d341 [Note: For security reasons, witness will not be allowed to use virtual backgrounds.]

Counsel must ensure their witnesses have or have access to the equipment, internet access, and training necessary to fully participate in the Zoom video hearing.

The Judge will provide counsel with a link and information and password to access the Zoom video hearing. Counsel will provide that information only to representatives of the parties and their witnesses in advance of the hearing. Others may join the call as spectators by contacting the Regional Office and supplying their name, email address, and telephone number. Regional Offices maintain lists of individuals that have been barred from proceedings due to past abusive conduct and are best equipped to raise concerns about whether a spectator should be granted access.

The ALJ will disseminate a separate pdf document containing access information for the parties to forward to witnesses and for the General Counsel to provide to the Region. Do not directly forward this email to other individuals, because it contains the ALJ’s and others contact information. Save the pdf and attach it to a new email before sending it. This method should preserve the hyperlinks allowing easier access.

Counsel and the Regional Office must provide the ALJ a list of all individuals to which they have sent the access information. This list is for procedural use only and will not be part of the record. It is to be sent to the ALJ and not the opposing party. The list must include the individual's name, email address, telephone number and role in the proceeding (e.g. co-counsel who will question witnesses, co-counsel not expected to question witnesses, representative, representative who is also a witness, witness, spectator). This list is necessary for the ALJ to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room.

Setting-Up Equipment and Area

- Set up your computer, laptop, or tablet in a well-lit, quiet room with a non-distracting background and with the strongest light source in front of you.
- Station camera at or slightly above eye level (the witness's face and what is in front of them should be visible) and speak directly at the camera, not at the screen. The Judge may ask the witness to move the camera to show their surroundings.
- Headsets or earphones with built-in microphones may help reduce background noise.
- Avoid running unnecessary applications besides Zoom to conserve processing power and networking.
- Mute sounds from all other applications (e.g., email notifications, chat messaging, etc.).
- Plug computer, laptop, tablet or phone into a good power source while at the hearing.
- If possible, avoid sharing your internet/wifi service with others during the hearing.
- Dress the same way you would dress for in-person appearance.

PROCEDURAL MATTERS:

Subpoenaed Documents and Joint Exhibits

- Parties should serve subpoenas as far in advance of hearing as is practical with a goal of no later than *3 weeks prior to the hearing date*. If there are issues about the subpoenas, the parties should meet and confer to attempt to resolve those issues. Parties should notify the Judge as soon as possible of subpoena issues they are unable to resolve. The parties should discuss producing subpoenaed documents prior to the hearing.
- The parties should discuss and agree, to the extent possible, on joint exhibits and factual stipulations to expedite matters. If there are exhibits for which one party refuses to include in the joint exhibits but has no viable objections to its relevancy or authenticity, please consider not objecting to the moving party submitting those documents into the record at the outset of the hearing at the same time the joint exhibits are received. To the extent possible prior to the hearing all joint exhibits should be compiled into one file and each party's separate exhibits should each be compiled into one pdf file and labeled and bookmarked as discussed below.
- All confidential personal identifying information such as Social Security Numbers, birth dates, home address, personal email address, personal phone number, etc. must be redacted from the exhibits.
- Confidential documents, such as medical records and Jencks statements, will be shared at the appropriate time during hearing and in an appropriate format to ensure that they are shared with only those who need to see them. Because appropriate safeguards may vary depending on the circumstances, a method will be decided upon after listening to parties' capabilities and concerns. Some possible methods for accomplishing this are:
 - emailed to the necessary party for use while needed and with assurances on the record (and/or in a written affirmation) that all electronic copies are deleted from all mailboxes, files, and trash bins/folders and all paper copies are shredded or will be returned by mail.
 - shared with necessary individuals via "screen share" in a breakout room—prevents public viewing of the document.
 - delivered in sealed envelope to be open while on video conference with a return envelope for the document(s) to be sealed in while still on video camera.

GENERAL GUIDELINES:

- The court reporter is the only person authorized to record the hearing. Any recording by a party or other person of a without the permission of the Judge is prohibited. All participants are deemed to consent to recording.
- Each witness will be administered an oath before testifying. After administering the oath, the witness will be asked if anyone is with them or communicating with them while testifying; and what, if any, materials are in front of them (electronically or otherwise). The witness will be told to put away those materials until directed to review them.
- Participants must speak one at a time and pause prior to speaking in case there is any audio/video lag. Counsel should wait for a witness to finish their answer, and the witness should wait for counsel to finish their question, before speaking. Please wait a few seconds before responding to ensure the speaker is finish. This lag may feel unnatural but is necessary to not talk over each other. Please emphasize this lag time with your witnesses and that they are to stop speaking anytime they hear the word “objection.” If there is an objection, the witness must stop and wait for instruction from the Judge.
- If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room. The Judge or his co-host will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

PARTIES EXHIBITS:

- Exhibits should be pre-marked by Exhibit No. (e.g., Jt. Exh. ___, “GC Exh. ___,” “CP Exh. ___,” or “R. Exh. ___”). All exhibits should be saved in one pdf file and book marked and labeled with the Exhibit No. for each exhibit.
- Again, all confidential personal identifying information such as Social Security Numbers, birth dates, home address, personal email address, personal phone number, etc. must be redacted from the exhibits.
- If an exhibit is multiple pages and not otherwise paginated, the exhibit must be legibly paginated (e.g., “Page ___ of ___.”).
- It is highly recommended that witnesses receive copies of all exhibits they will be asked to testify about prior to testifying.

ATTACHMENT B

WITNESS INSTRUCTIONS AND GUIDELINES FOR VIDEO HEARINGS

You are receiving these instructions because you may be appearing as a witness in a National Labor Relations Board hearing. Due to the compelling circumstances created by the COVID-19 pandemic, the Administrative Law Judge (“ALJ”) will conduct the hearing using the videoconferencing platform Zoom. The guidelines and instructions for the video hearing are as follows:

Before the Video Hearing

Zoom and Necessary Equipment

You will need a Zoom account. To create a free Zoom account, visit <https://zoom.us>. If you will be using a computer or laptop, you also must download and install Zoom Client. This is done by hovering over the “Resources” tab on the (top right) of the Zoom.us website and selecting “Download Zoom Client.” If you will be using a tablet or smartphone you must download and install Zoom from the App Store. Your Zoom profile must consist of your first and last name. Zoom has several helpful videos and instructions on its website that you may want to review to learn about the technology.

In addition to having Zoom, you must also have access to a reliable internet connection and a device you can use to participate in the hearing by audio *and* video. We recommend that you use a computer or laptop with a microphone, speaker and a web camera. In the alternative, you may use a smartphone or tablet, but those devices may be less effective if/when you need to receive and review documents. Regardless of the device you use, we recommend using a headset or earphones with a microphone to help reduce feedback and background noise.

Invitation to Video Hearing

One of the attorneys (most likely your attorney or the attorney who has called you to testify as a witness) will provide you with an email copy of the invitation to attend the video hearing. The invitation will contain a link to “Join ZoomGov Meeting” and a “Meeting ID” and “Password” that you can use to participate in the video hearing through Zoom. You (or your attorney) should communicate with the attorney calling you to estimate when you will be needed to testify. Do not share the contents of the invitation with others. If you know someone who would like to attend as a spectator, please discuss it with the attorney who sent you the invitation and be prepared to provide the individual’s name, email address, and telephone number.

Hearing Preparation

Before the hearing, please take the following steps:

1. Set up your computer, laptop, tablet or smartphone in a well-lit and quiet room with no one else present and as far from distractions as possible;
2. If possible, make sure the main light source is from behind your device or facing you;
3. Witnesses are not allowed to use virtual backgrounds;
4. Position the web camera at or slightly above eye level where it is stationary/hands free;
5. Test your equipment and internet connection (www.zoom.us/test);
6. Close out and avoid running unnecessary applications besides Zoom during the hearing;
7. To the extent possible, limit the number of other devices connected to the internet/wifi service at your location during the hearing;

8. Mute sounds from other applications (e.g., email notifications, chat messaging, etc.); and
9. Plug your device into a good power source.

If you have any issues, please contact your attorney or the attorney calling you as a witness.

Joining the Hearing

1. The attorney who has called you as a witness will notify you (or your attorney) about when to log into Zoom and be available to testify. Because the exact time for your testimony may change, please provide the attorney with multiple ways to contact you (e.g., telephone, cell phone, email), and be on standby to log on to Zoom and testify on short notice.
2. Please join the video hearing at least 5 minutes before the time you are asked to testify. You can join the hearing by clicking the “Join Zoom Gov Meeting” link in the invitation or clicking “Join a Meeting” in Zoom and entering the “Meeting ID” and “Password.” If you receive a message asking whether to open Zoom in the browser or in the Zoom app, select the Zoom app. Select “Join by Computer Audio,” even if you are connecting via smartphone or tablet.
3. When you join the Zoom hearing, you will first see that you are in a Zoom “Waiting Room.” Please do not disconnect from the Waiting Room. The ALJ will receive a message that you are in the Waiting room, and the ALJ will bring you into the video hearing when it is your turn to testify.
4. The video hearing is an official court proceeding. Please approach the hearing with the same level of respect that you would approach an in-person proceeding in a courthouse, and accordingly wear appropriate clothing and use appropriate language.
5. Your video will be and should be on when you join the video hearing. If your audio is on “Mute,” as indicated by a microphone symbol with a slash mark at the bottom of your device screen, then no one will be able to hear you when you speak during the video conference. You may “Unmute” yourself by clicking on the microphone symbol one time, which will remove the slash mark on the microphone symbol and allow everyone to hear when you testify.

During the Hearing

1. Participants, witnesses and observers may NOT record, duplicate, or save or photograph any audio, video or image of any part of the proceeding, including conferences or breakout room discussions. The court reporter is the only person authorized to record the hearing.
2. Please do not talk over another person. Pause before speaking to avoid having more than one person speaking at the same time (e.g., due to a lag in the audio/video). Please wait for the attorney to finish the question before starting your answer. If you hear an attorney object (e.g. say the word “objection”), please stop speaking immediately and wait for instruction from the ALJ.
3. While testifying, you may not communicate with anyone else about your testimony (including during breaks), and you may not review any documents, devices, or other items unless the attorney or ALJ asks you to do so as part of a question they pose during your testimony. You may be asked to use your camera to show your surroundings prior to or while testifying.
4. During the trial, the attorneys may ask you to look at an exhibit. They may show you the document on your device screen or send you the document electronically. Please make sure you have provided an

email address that you can access during the hearing. You should answer any questions about the exhibit, and then put the exhibit aside once the attorney moves on to another line of questions.

5. At the end of your testimony, the ALJ will give you some final instructions and will likely instruct you not to tell any other possible witnesses about your testimony. The ALJ will then advise you when to disconnect from the Zoom video hearing.

6. One of the attorneys will contact you if you need to appear again to provide additional testimony.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES/SAN FRANCISCO BRANCH**

VANGUARD PROPERTIES, INC.

and

Case 20-CA-254600

MELISSA RAMOS, an Individual

**ORDER REQUIRING THE AUGUST 31, 2020 HEARING IN THIS MATTER TO BE
CONDUCTED BY VIDEOCONFERENCE**

The hearing in this matter is currently scheduled to begin at 10:00 a.m., on August 31, 2020, and consecutive days thereafter, at the Natalie P. Allen Memorial Courtroom, 901 Market Street, Suite 400, San Francisco, California or in a manner including via video conference technology or at a location otherwise ordered by the Administrative Law Judge. On August 3, 2020, I held a status conference call with counsel in this case and informed them that due to the current compelling circumstances in the San Francisco Bay Area, the hearing in this matter shall be conducted via video conference using the Zoom for Government platform.

In accordance with Section 102.35(c) of the Board's Rules and Regulations and the Board's recent guidance regarding the conduct of hearings in *Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020), due to the "compelling circumstances" created by the current Coronavirus Disease (COVID-19) pandemic, the hearing in this case shall be conducted remotely via video conference using Zoom for Government technology and under appropriate safeguards, is scheduled at 10:00 a.m. Pacific Time on August 31, 2020, and on consecutive days thereafter.

The Prehearing Order below informs the parties and counsel on how to access Zoom technology and instructions and guidelines regarding the Zoom Hearing.

Prehearing Order: Access, Instructions, and Guidelines Regarding Zoom Hearing

The following order addresses how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on Monday, August 31, 2020, at 10:00 a.m. Pacific time (PT). It also includes additional instructions and guidelines regarding the conduct of the Zoom hearing.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you may join the meeting online with a computer or laptop with a camera and

microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer or laptop by hovering over the Resources tab in the upper right of the screen and selecting “Download Zoom Client.” If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the “Join Zoom” link below. Alternatively, you can click on “Join a Meeting” in your Zoom app and enter the meeting code. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser.

When you enter, select “Join by Computer Audio” (even if you are connecting via a smart phone). You will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and networking.

As we also discussed yesterday, I am also inviting you to a scheduled ZoomGov meeting follow-up pre-hearing status conference call on Monday, August 17 at 10:00 a.m. PT with the immediately following code and passcode:¹

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1618436698?pwd=VkloTTB4UWh4Z29RQVQxRWZBSEhiQT09>

Meeting ID: 161 843 6698

Passcode: 168044

One tap mobile

+16692545252,,1618436698#,,,,,0#,,168044# US (San Jose)

+16468287666,,1618436698#,,,,,0#,,168044# US (New York)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

833 568 8864 US Toll-free

Meeting ID: 161 843 6698

Passcode: 168044

Find your local number: <https://www.zoomgov.com/u/abyiYx5bB>

¹ A new and separate ZoomGov e-vite for the August 31, 2020 hearing will be issued and served after the August 17, 2020 Zoom status conference.

Join by SIP
1618436698@sip.zoomgov.com

Join by H.323
161.199.138.10 (US West)
161.199.136.10 (US East)
Meeting ID: 161 843 6698
Passcode: 168044

Join by Skype for Business
<https://www.zoomgov.com/skype/1618436698>

If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or call courtroom deputy Mark Eskenazi, at 202-273-1080 for assistance. Mr. Eskenazi is an attorney in the Office of the Executive Secretary at the National Labor Relations Board. As we also discussed yesterday, Mr. Eskenazi or his designee Courtroom Deputy have been screened from working on this case if it comes before the Board. They will be serving as Courtroom Deputy to assist me with Zoom technical issues throughout the hearing. If you cannot reach Mr. Eskenazi or his designee, please call Vanise Lee of the San Francisco Branch of the Judges Division at 628-221-8826 for assistance.

II. *List of individuals who may join the meeting, including Non-participant Observers (public access)*

No later than 9:00 a.m., PT on Wednesday, August 26, 2020, counsel must email the Judge, Courtroom Deputy, and court reporter a list of all hearing participants to which counsel has sent the access information. This list is for procedural use only and will not be part of the record. The list must include the individual's name, email address, telephone number and role in the proceeding. This list is necessary for the Judge or Courtroom Deputy to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room. However, parties will not be precluded from calling witnesses who are not on this list if necessary for the presentation of their case.

The parties must provide the identity and email addresses of any nonparticipant observers to the Regional Office also **no later than 9:00 a.m., PT on Tuesday, August 25, 2020**. It is the responsibility of the Regional Office to advise nonparticipant observers the manner in which they will be able to access the hearing. Identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

III. Additional Instructions and Guidelines

A. No videotaping or recording

DO NOT VIDEOTAPE, BROADCAST, TELEWISE, AUDIO RECORD, OR PHOTOGRAPH, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER.

Violation of this rule or causing disruptions may result in removal and other sanctions.

B. Providing all potential exhibits to the Judge, Courtroom Deputy, your witnesses and opposing parties in advance of hearing

It would greatly facilitate the conduct of the hearing if the parties emailed all of their potential exhibits to the Judge, Courtroom Deputy, their own witnesses and opposing counsel **no later than 9:00 a.m. PST on Thursday, August 27, 2020**. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the complaint may be witnesses. Therefore, the parties are requested to provide any exhibits they plan to use with such witnesses to the opposing counsel in advance with the exception of *Jencks* materials.

In lieu of email, a party can provide exhibits to the Judge, Courtroom Deputy, other parties by uploading them to the NLRB's SharePoint page for this case. The parties will be emailed a link to this page by the assigned Courtroom Deputy for this case prior to the August 17 pre-trial Zoom status conference. If a party cannot locate the email, they should check their Spam and other folders or contact Mr. Eskenazi or his designee. It is requested that a party that may potentially introduce an audio or video exhibit, or another very large file, inform the Judge, Courtroom Deputy, and opposing counsel **no later than 9:00 am PST on Thursday, August 27, 2020**. Such files may not be transmittable over email and may need to be uploaded to the SharePoint page.²

All exhibits shall be pre-marked, paginated and converted into one bookmarked PDF file per party.

All confidential personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the exhibits.

² The parties can contact (b) (7)(E) SharePoint Developer at (b) (7)(E) to gain access to the SharePoint document library for this case or the assigned Courtroom Deputy.

C. Calling witnesses and forwarding the electronic meeting invitation (“e-vite”)

Counsel must forward the trial e-vite that will be issued *after* the August 17 Zoom status conference to their witnesses or provide to the Courtroom Deputy and the Judge before August 17, 2020, the witnesses’ email addresses so that the Courtroom Deputy or Judge can send an e-vite to them. When counsel forwards the e-vite, counsel should take care not to also forward the email address of the Judge or the Courtroom Deputy.

Counsel must also ensure that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing.

Witnesses may not use a virtual background. Opposing counsel must be able to see who, if anyone, is in the room with them when they testify.

The Courtroom Deputy or the Judge will admit witnesses into the hearing from the waiting room.

D. Conferring via the Zoom breakout room function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room.

The Judge or the Courtroom Deputy will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

E. Jencks Statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email or the Zoom chatroom function, after a witness has testified on direct examination. After cross-examination opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

F. Exhibits

The parties are strongly encouraged to distribute exhibits before hearing or each witness. Options:

- 1) Mail/hard copy (before hearing only, best for witnesses)
- 2) Email, preferably in a single bookmarked PDF file (before or during hearing)³

³ *Bookmarking instructions are included in the attached Sample Zoom Hearing Invitation and Instructions.*

3) Sharepoint (same, especially for large docs/videos that cannot be emailed)⁴

4) Zoom Screen share (during hearing, to show witness and parties an exhibit)

[Chat function will be disabled]

If sent as an attachment via email or SharePoint, everyone may download and view the document on their own. Ensure exhibits are properly marked, paginated, and bookmarked before the hearing or before being offered into the record as an exhibit.

The Judge may ask, upon the request of a party, witnesses to move the camera to show their surroundings.

G. Offering exhibits into the record

Counsel may email or use SharePoint to send an exhibit to other counsel, the Judge, and the reporter if they have not already done so; they can then download it to their computer as an admitted exhibit. Email and SharePoint are the recommended methods for sharing exhibits.

Counsel are encouraged to share this Order/Guideline with the party it represents, witnesses and persons who request to observe the hearing through counsel or the party it represents.

So Ordered.

Dated at San Francisco, California, this 4th day of August 2020.



Gerald M. Etchingham
Administrative Law Judge.

⁴ If you wish to use Sharepoint at hearing for large pdf files or video/audio exhibits, please email the Courtroom Deputy and they will arrange to create a case page and the parties and the trial judge a link.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES - WASHINGTON DC

RIETH-RILEY CONSTRUCTION CO, INC.

and

Case 07-CA-234085

LOCAL 324, INTERNATIONAL UNION OF
OPERATING ENGINEERS (IUOE), AFL-CIO

LOCAL 324, INTERNATIONAL UNION OF
OPERATING ENGINEERS (IUOE), AFL-CIO

and

Case 07-CB-226531

MICHIGAN INFRASTRUCTURE AND
TRANSPORTATION ASSOCIATION, INC.

ORDER REQUIRING HEARING RESUMPTION
TO BE CONDUCTED BY VIDEOCONFERENCE

The hearing in these cases is scheduled to resume on July 27, 2020 at 9:00 a.m. eastern time at the Patrick V. McNamara Federal Building in Detroit, Michigan. On June 30, 2020, I held a telephone conference call with counsel to discuss whether to resume this hearing in-person or via videoconferencing, in light of the current Coronavirus Disease (COVID-19) pandemic. The attorneys all consented to proceeding via videoconferencing. Moreover, resuming the hearing in-person as scheduled would place substantial and unnecessary risk on all participants. Accordingly, pursuant to Section 102.35(c) and 102.35(a)(6) of the Board's Rules and Regulations and due to the "compelling circumstances" created by the pandemic, I hereby order that the hearing resumption will be conducted remotely via videoconference with appropriate safeguards using the Zoom for Government platform. *Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020).

My procedural guidelines for video hearings are attached to and made a part of this order. I will hold at least one additional conference call via Zoom to allow counsel to

familiarize themselves with the technology and to raise any questions or concerns they have regarding the procedural guidelines.

Dated, Washington, D.C., July 3, 2020.

A handwritten signature in black ink, appearing to read "Charles J. Muhl". The signature is written in a cursive, flowing style.

Charles J. Muhl
Administrative Law Judge

PROCEDURAL GUIDELINES FOR VIDEO HEARINGS.

These guidelines address how identified participants and non-participant observers may access the video hearing, the procedures participants must follow to take part in the hearing, and appropriate safeguards being adopted to ensure the judge can assess witness credibility and the parties have a meaningful opportunity to examine and cross-examine witnesses. Counsel are encouraged to share this order with their party representatives, witnesses, and persons who request to observe the hearing.

I. ZOOM FOR GOVERNMENT

The hearing will be conducted using Zoom for Government. All participants are required to have a Zoom account. To create one, visit www.zoom.us. Download and install the free Zoom client on a desktop or laptop by hovering over the Resources tab in the upper right of the screen and selecting “Download Zoom Client.” (Utilizing a desktop or laptop with audio/video capability is highly recommended. It is possible to use Zoom on a smartphone or tablet, but certain functions, like sharing and viewing documents during the hearing, are limited.) You must sign up using your real name. Training on how to use Zoom is available at <https://support.zoom.us/hc/en-us>. Participants should test their Zoom connection and setup prior to the hearing by using www.zoom.us/test.

II. PREHEARING PROCEDURES

Prior to the hearing, the judge or bailiff/co-host¹ will email a Zoom meeting invitation to all attorneys who have filed a notice of appearance in these cases. Counsel must forward this invitation to their party representative and all witnesses prior to the hearing. Counsel for the General Counsel also must forward the invitation to the court reporter. When forwarding the invitation, the email addresses of the judge and/or bailiff must be removed. Counsel also must ensure that their witnesses have the necessary equipment and Internet speed to join and testify at the Zoom hearing.

No later than Friday, July 24, 2020 at 5:00 p.m. eastern time, counsel must email the judge a list of all hearing participants, including party representatives and witnesses, to which counsel has sent the access information. This list is for procedural use only and will not be disclosed to opposing counsel or be a part of the record. The list must include the individual’s name, email address, telephone number and role in the proceeding. This list is necessary for the judge to allow the appropriate access to the hearing and to correctly assign individuals to waiting or breakout rooms (discussed below). However, parties will not be

¹ Laurel Goldstein will be acting as the bailiff/co-host in this hearing and assist the judge with Zoom and any technical issues that arise. The bailiff is an attorney who is assigned to the staff of a Board Member of the National Labor Relations Board. The bailiff has been screened from working on this case if it comes before the Board.

precluded from calling witnesses who are not on this list, if necessary for the presentation of their case.

Prior to the hearing, all exhibits should be pre-marked, paginated, and converted into one bookmarked PDF for each witness. All confidential personal identifying information, such as Social Security numbers, birth dates, etc., should be redacted from the exhibits. To enhance the video hearing efficiency, parties are strongly encouraged to consider agreeing to joint exhibits and/or stipulations concerning uncontested factual matters.

If subpoenaed documents have not been exchanged prior to the hearing, they must be sent electronically to the requesting party at the start of the hearing.

III. JOINING THE HEARING

On the day of the hearing, join the Zoom meeting a few minutes prior to the scheduled start time utilizing one of the options listed in the invitation. (It is highly recommended that you join the meeting utilizing the Zoom computer program, not by accessing the Zoom website in a browser, because the computer software allows you to participate more fully in the hearing.) When you enter, select “Join by Computer Audio.” You automatically will be placed in an online waiting room until admitted to the hearing. Please be patient, as it may take several minutes before you are admitted.

During the hearing, avoid running unnecessary programs on your computer, as they may slow processing time. Turn off any audio notifications associated with other programs on your computer.

If you are unable to join the meeting either online or by phone, contact Laurel Goldstein at (202) 273-1707 for assistance. If you cannot reach Laurel Goldstein, call the Judges Division in Washington DC at (202) 501-8800 for assistance.

IV. HEARING PROCEDURES AND SAFEGUARDS

a. Prohibition on recording

DO NOT VIDEOTAPE, BROADCAST, TELEVISION, AUDIO RECORD, PHOTOGRAPH (INCLUDING TAKING SCREENSHOTS), OR OTHERWISE RECORD THE HEARING. RECORDING IS ONLY PERMITTED BY THE COURT REPORTER. Violation of this rule may result in removal and other sanctions.

b. Calling witnesses

After calling a witness, counsel should advise the witness to enter the Zoom meeting utilizing the previously-sent invitation. The witness will be placed in the waiting room and the

judge or bailiff will admit the witness into the hearing at the appropriate time. After a witness is sworn in, the judge will ask the witness to scan the room the witness is in with the camera and will advise the witness that communication with anyone (other than answering questions from the participant attorneys or the judge) is prohibited. Witnesses may not use a virtual background. The judge and opposing counsel must be able to observe the room the witness is in when testifying.

During examination of a witness, attorneys for a party may communicate with one another or with the party representative (other than when the representative is on the witness stand) via text, instant messaging, or any other silent communication method.

c. Exhibits

Prior to calling and examining a witness, counsel must email the witness, opposing counsel, the judge, and the court reporter all exhibits to be used in the direct examination. Likewise, opposing counsel must email all exhibits to be used in cross examination to the same individuals prior to beginning the examination. Parties preferably will use their copies of the emailed exhibits to view documents and question a witness about them in the hearing.

If an attorney does not wish to use the emailed exhibits during a witness's examination, counsel instead may use the "Share Screen" or "Chat" functions in Zoom to show a document to a witness, other counsel, and the judge. If a document is shown via Share Screen, counsel may scroll down the document page by page or go to a particular page. Counsel also can give control over the document to another participant, including the witness, on request. If a document is shared via Chat, everyone may download and view their own copy of it.

Counsel also may choose to deliver hard copies of exhibits to a witness in advance of the hearing, utilizing a sealed envelope that would not be opened until the witness testifies.

d. Jencks statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email or the Zoom Chat function, after a witness has testified on direct examination. After cross examination, opposing counsel **MUST** delete all Jencks statements received and represent to the court and the General Counsel that this has been done.

e. Attorneys' private consultations utilizing a Zoom "Breakout Room"

If counsel want to speak privately to each other or a party representative (other than when the representative is on the witness stand), they may ask to be placed in a private Zoom Breakout Room. Conversations inside the Breakout Room cannot be heard by persons outside of it. When the conversation is complete, the participants can request to be returned to the hearing and the judge or bailiff will close the Breakout Room. The judge can unilaterally close

the Breakout Room when it is appropriate to do so, but participants will receive adequate, advance notice via messaging to the Breakout Room before that is done.

f. Confirming exhibits with the court reporter

At the end of each hearing day, counsel must confirm that the court reporter has received electronic copies of all admitted or rejected exhibits.

g. Formal trial

Video unfair labor practice hearings are formal trials. All participants, including witnesses, are to conduct and dress themselves in the same manner as they would for an in-person hearing.

V. PUBLIC ACCESS TO HEARING

Pursuant to Section 102.34 of the Board's Rules and Regulations, all unfair labor practice hearings before an administrative law judge are public. Accordingly, other individuals who wish to attend the video hearing may do so, by contacting the Regional Office and providing their names, email addresses, and telephone numbers. **The Regional Office must provide the observer information to the judge no later than Friday, July 24, 2020 at 5:00 p.m. eastern time.** It is the responsibility of the Regional Office to advise nonparticipant observers how to access the hearing. Identified nonparticipant observers may join the Zoom meeting with a desktop, laptop, smartphone, or tablet. However, they must remain muted with their video off throughout the hearing.

Nonparticipants may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

VI. ALTERNATIVE PROCEDURES

Parties are free to propose to the judge alternative procedures which they believe might further enhance the efficiency and fairness of the video hearing.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

SECURAMERICA, LLC

Respondent

and

Case 07-CA-251817

**LOCAL 1, SERVICE EMPLOYEES
INTERNATIONAL UNION**

Charging Party

**ORDER FOR VIRTUAL (ZOOM) HEARING ON SEPTEMBER 23, 2020,
TELEPHONIC PRE-HEARING CONFERENCE ON SEPTEMBER 15, 2020 AND
ZOOM PRE-HEARING PRACTICE SESSION ON SEPTEMBER 21, 2020**

This matter, which was recently assigned to me, is scheduled for hearing on September 23, 2020. Therefore, I **Order** that, pursuant to Section 102.35 (c) of the Board's Rules and Regulations, due to the "compelling circumstances" created by the current Coronavirus Disease (COVID-19) pandemic, the hearing in this case will be conducted remotely by videoconference using Zoom technology. See *Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020). In addition, **it is Ordered that the parties will participate in a telephonic pre-hearing conference on Tuesday, September 15, 2020 at 2:00 p.m. (EST) and a Zoom practice session via Zoom on September 21, 2020 at 11:30 a.m. (EST).**

The practice session will allow the parties to familiarize themselves with the technology and its features and the processes for exchanging exhibits and admitting them into the record. Separate Zoom E-vites for the hearing and practice session will be provided to the Counsels and may be shared with co-counsel. The Counsel for the General Counsel should share the invitation with the court reporting company and the court reporter, as well as with the Charging Party for both days. It has proven helpful to have the assigned court reporting join the practice session. Take special note of the instructions below pertaining to acquiring a Zoom account, access and joining a meeting. Please direct any questions regarding this Order to Willene.Heflin@nrlrb.gov.

SO ORDERED.

Dated at Washington, D.C. September 11, 2020



Donna N. Dawson
Administrative Law Judge

Access Instructions and Guidelines for Zoom Hearings

The following instructions address how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on September 23, 2020. It also includes additional required instructions and guidelines regarding the conduct of the Zoom hearing. Please follow these instructions for any Zoom pre-hearing conferences and/or practice sessions as well.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you must join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended, as well as a reliable high-speed internet connection. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer or laptop by hovering over the Resources tab in the upper right of the screen and selecting "Download Zoom Client." If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the "Join Zoom" link once you have accessed your Zoom feature. Alternatively, you can click on "Join a Meeting" in your Zoom app and enter the meeting code and password. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser. Please make sure that your audio and video are working properly. If there are issues with your audio, try one or more of the following back-ups: 1) check the sound settings in Windows (usually at the bottom right of the computer near the clock) and the Zoom settings (at the bottom left click the up arrow next to the mute button); 2) reboot your computer and rejoin the hearing; and/or 3) use your computer for the Zoom video (with Zoom audio on mute) and use your phone to call in for audio.

When you enter, select "Join by Computer Audio" (even if you are connecting via a smart phone), you will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and ensure an adequate networking connection.

If you are unable for some reason to join the meeting online using the Zoom app or web browser and need assistance, you may join the meeting by calling the appropriate phone number at the bottom of the Zoom e-vite and entering the meeting ID and password when prompted.

If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or bailiff/co-host (number will be provided) for assistance. If you cannot reach these individuals, call the Judges Division at 202-501-8800 for assistance.

Each hearing participant must hide non-video, non-hearing participants, such as public spectators, paralegals and interns, so they do not take up screen space.

II. List of Individuals Who May Join the Meeting, Including Non-participant Observers (public access).

Counsel must ensure their witnesses have access to the equipment, internet access, and training necessary to fully participate in the Zoom video hearing.

The Judge will provide counsel with a link and information and password to access the Zoom video hearing. Counsel will provide that information only to co-counsel, party representatives, paralegals and their witnesses in advance of the hearing. Others may join the call as spectators by contacting the Regional Office and supplying their name, email address, and telephone number.

The ALJ may disseminate a separate pdf document containing access information for the parties to forward to witnesses. **Do not** directly forward this email to other individuals, because it may contain the ALJ's and others' contact information. Save the pdf and attach it to a new email before sending it. This method should preserve the hyperlinks allowing easier access. In the alternative, you may copy and paste your invitation (without the ALJ's and others' contact information) to a separate email.

No later than 12:00 noon (EST) on the Friday before the hearing, counsel **must** email the Judge, bailiff/co-host and court reporter a list of all hearing participants to which counsel has sent the access information. This list is for procedural use only and will not be part of the record. The list must include each participant's real name, email address, telephone number and role in the proceeding. This list is necessary for the Judge to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room. However, parties will not be precluded from calling witnesses who are not on this list, if necessary, for the presentation of their case and once their information is provided to the Judge and/or bailiff.

The parties **must** provide the identity and email addresses of any nonparticipant observers to the Regional Office and the bailiff/co-host no later than 12:00 noon (EST) on the Friday before the hearing. It is the responsibility of the Regional Office to instruct nonparticipant observers on how to access the hearing. The ALJ will provide the bailiff/co-host with the same information regarding any nonparticipant observers invited by the ALJ. Identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

III. Addition Instructions and Guidelines

No Videotaping or Recording

DO NOT VIDEOTAPE, BROADCAST, TELEWISE, AUDIO RECORD, OR PHOTOGRAPH, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER.

Violation of this rule or causing disruptions may result in removal and other sanctions.

Subpoenaed Documents and Exhibits

The parties **must** email all potential subpoenaed documents and exhibits to the bailiff/co-host and the court reporter and to appropriate witnesses, if necessary, no later than 12:00 noon (EST) on the Friday before the hearing. This will ensure the efficient handling of documents during the hearing. The only exception may be the Jencks materials with approval by the Judge. All confidential, personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the documents/exhibits.

All exhibits **must** be pre-marked, paginated and converted into one bookmarked, clickable PDF formatted file per party. If there is difficulty paginating and/or converting to bookmarked PDF files, please notify the ALJ and/or the bailiff assigned for assistance.

Parties should serve subpoenas as far in advance of the hearing as is practical with a goal of no later than *3 weeks prior to the hearing date*. If there are issues about the subpoenas, the parties should meet and confer to attempt to resolve those issues. Parties should notify the Judge as soon as possible of subpoena issues they are unable to resolve.

The parties should discuss and agree, to the extent possible, on joint exhibits and factual stipulations to expedite matters. If there are exhibits for which one party refuses to include in the joint exhibits but has no viable objections to its relevancy or authenticity, please consider not objecting to submission of those documents into the record at the outset of the hearing.

Confidential documents, such as medical records and Jencks statements, will be shared at the appropriate time during hearing and in an appropriate format to ensure that they are shared with only those who need to see them. Jencks statements (such as affidavits given to the General Counsel) will be provided to opposing counsel via email, upon request, immediately after a witness has testified on direct examination. After cross-examination opposing counsel **must** delete all Jencks statements from their computer (i.e., from all mailboxes, files/folders and trash bins) and represent to the court and the General Counsel that it has done so. Opposing counsel must not, under any circumstances, copy, photograph or otherwise reproduce copies of these statements. All paper copies **must** be shredded or returned by mail.

If there are large document files or video and/or audio files, they must be uploaded into the ALJ's protected Sharepoint file for this case on or before noon (EST) on the Friday prior to the

hearing. The ALJ may also require or permit other exhibits to be uploaded in this manner. Counsel will be provided with the necessary link and instructions on how to upload files. Uploading and sharing of any documents or recordings will be further discussed during the pre-hearing conferences.

Calling Witnesses and Forwarding the Electronic Meeting Invitation ("e-vite")

Counsel are responsible for ensuring that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing. Participants, including counsel and witnesses, **may not** use a virtual background. The Judge and opposing counsel must be able to see who, if anyone, is in the room with witnesses when they testify. Witnesses **must** keep their hands in view of their cameras throughout the duration of the hearing, unless they are using a device that does not permit them to do so. If the latter is the case, counsel must inform the ALJ.

The Judge or bailiff/co-host will send a witness an e-vite to the Zoom hearing if counsel did not already forward an e-vite. The ALJ or bailiff/co-host will admit witnesses into the hearing from the waiting room where they must wait until called to testify.

Setting-Up Equipment and Area

- Set up your computer, laptop, or tablet in a well-lit, quiet room with a non-distracting background and with the strongest light source in front of you.
- Station camera at or slightly above eye level (the witness's face and what is in front of them should be visible) and speak directly at the camera, not at the screen. The Judge may ask the witness to move the camera to show their surroundings.
- Headsets or earphones with built-in microphones may help reduce background noise.
- Avoid running unnecessary applications besides Zoom to conserve processing power and networking.
- Mute sounds from all other applications (e.g., email notifications, chat messaging, etc.) and other devices.
- Witnesses must, and will be reminded, to mute the sound on their devices when they are not testifying.
- Plug computer, laptop, tablet or phone into a good power source while at the hearing.
- If possible, avoid sharing your internet/wi-fi service with others during the hearing.
- Dress the same way you would dress for in-person appearance.

Conferring via the Zoom Breakout Room Function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room. The Judge or the bailiff will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

Showing Documents to Witnesses During Examination

Counsel may share documents with witnesses during examination in the same manner which is discussed above. If shared, counsel may scroll down the document page by page or go to a specific page. Counsel may also give control of the document to another participant on request, such as the bailiff/co-host, who may scroll through it. If sent as an attachment in an email or group chat, everyone may download and view the document on their own.

Offering Exhibits into the Record

Counsel will be instructed more specifically before or during the practice Zoom session on how to offer and submit exhibits into the record and provide them to the court reporter if they have not already done so.

Counsel are encouraged to share appropriate parts of this Order/Guidelines with the parties they represent, witnesses and, if necessary, persons who request to observe the hearing through counsel or the party it represents.

CERTIFICATE OF SERVICE

I certify I have served, by electronic mail on September 11, 2020, a copy of the foregoing Order for Virtual (ZOOM) Hearing on September 23, 2020, Telephonic Pre-hearing Conference on September 15, 2020 and ZOOM Pre-hearing Practice Session on September 21, 2020, upon each party at the email addresses listed below:

Donna Nixon, Esq.
Donna.nixon@nlrb.gov

Jonathan E. Kaplan, Esq.
jkaplan@littler.com

Michele Cotrupe, Esq.
cotrupem@seiu1.org

Genie Kastrup, Chief of Staff
kastrupg@seiu1.org



Willene Heflin
Designated Agent

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

AT&T MOBILITY SERVICES, LLC

Case 25-CA-249079

And

COMMUNICATIONS WORKERS OF AMERICA, LOCAL
4202, A/W COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO

STIPULATED WITNESS STATEMENT PROTECTIVE ORDER

AT&T Mobility Services, LLC (herein "Respondent"), Communications Workers of America, Local 4202 (herein "Charging Party), and General Counsel of the National Labor Relations Board (herein "General Counsel") agree to the following:

1. A witness statement is defined in Section 102.118(g) of the National Labor Relations Board's Rules and Regulations (herein "Board's Rules and Regulations") as:

a written statement made by said witness and signed or otherwise adopted or approved by him; or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the party obligated to produce the statement and recorded contemporaneously with the making of such oral statement.
2. Such statements whether in the form of affidavits, e-mails, or other recordings are commonly referred to as "*Jencks* Statements." See *Jencks v. U.S.*, 353 U.S. 657, 672 (1957).
3. In accordance with Section 10394.9 of the National Labor Relations Board Casehandling Manual (herein "Casehandling Manual"), General Counsel will provide, upon request and when producible, as set forth in Board's Rules and Regulations Section 102.118(e) and its Casehandling Manual Sections 103947(b) and 103948, a copy of each witness' statement to counsel or other representative for Respondent. Such production will be via e-mail, SharePoint, or other agreed upon system.

4. Section 102.118(b) of the Board's Rules and Regulations limits the production of witness statements for the purpose of cross-examination and prohibits any other use.
5. Witness statements may not be copied, photographed, downloaded, or duplicated in any manner.
6. Witness statements may not be disclosed to anyone not directly involved in the applicable cross-examination.
7. Witness statements must not be retained after the close of hearing, unless the statements have been offered and accepted in evidence.
8. At the conclusion of a witness's testimony, Respondent must return all witness statements to the General Counsel in the same manner in which it was produced and/or destroy the material in its entirety.
9. "Destroy" shall mean deletion of information from all databases, applications and/or file systems in a manner such that they are not readily accessible without the use of specialized tools or techniques typically used by a forensic expert.
10. Respondent must affirmatively state the specifics of how the witness statements were returned or destroyed, whether in electronic or hard copy format. For example, if a witness statement was e-mailed and subsequently printed out, Respondent must state that it permanently deleted the e-mail from its Inbox and destroyed all paper copies. If a witness statement was accessed via SharePoint, Respondent must state that it permanently deleted the statement from its computer—closing a PDF viewer containing the statement is not sufficient.
11. If Respondent loaded a witness statement into any litigation database, Respondent shall be responsible to ensure all such information is extracted from such database (including any associated staging databases) and destroyed.
12. This stipulation also applies where Charging Party may be entitled, upon request and for the purpose of cross-examination, to a producible witness statement, in the possession of General Counsel, of an agent who testifies on behalf of Respondent.
13. Any person may bring the violation of this Order to the attention of the Administrative Law Judge at any time, and the Administrative Law Judge will have the authority to remedy any breach. Appeals from the Administrative Law Judge's rulings shall be governed by § 102.26 of the Board's Rules and Regulations.

Counsel for Respondent

Counsel for the General Counsel

Representative for Charging Party

Administrative Law Judge

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

PROFEX, INC.,

and

Case 03-CA-259352

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 825**

**CASE MANAGEMENT ORDER WITH INSTRUCTIONS FOR TRIAL BY
VIDEOCONFERENCE**

The notice of hearing in this case set this matter for hearing on October 1, 2020, at 10 AM EST by virtual hearing on a Zoom for Government platform. This order addresses how trial participants and non-participant observers may access the unfair labor practice trial on Zoom, and also provides instructions for how the trial will proceed.

Zoom invitations

Before the hearing date, I will send the parties a Zoom invitation. The parties may share Zoom invitation with other participants and observers.

Trial Guidelines

As preliminary resources that may assist with preparing for trial, trial participants (attorneys, representatives and witnesses) may refer to the following guidelines, Attorney/Representative Instructions and Guidelines for Video Hearings; and Witness Instructions and Guidelines for Video Hearings. For reference, each of those documents is attached to this order (as exhibits A and B, respectively).

Courtroom Deputy

There will be a courtroom deputy assigned prior to trial. He or she will be an NLRB employee and will be screened from working on this case if it comes before the Board. The courtroom deputy will be available during the trial to assist with managing the trial, handling exhibits, and troubleshooting technical issues with Zoom, should any arise.

Identification of Participants

To facilitate managing the trial and access thereto, **by Noon (Eastern time) on September 28, 2020**, each party must email the Judge a list of all trial participants to which

counsel has sent information about accessing the trial on Zoom. This list is for procedural use only and will not become part of the record. The list must include each participant's name, email address, telephone number and role in the proceeding. This list is necessary for the Judge to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms (when needed) or the waiting room.

Notwithstanding these instructions, a party will not be precluded from calling a witness who is not on the party's participant list if the witness is necessary for presenting the party's case.

To limit the number of video images on the Zoom video display during trial, the following participants generally should be the only participants with their outgoing video turned on: the Judge; one attorney per party (typically the attorney presenting argument or handling the witness);¹ and the witness.

All other trial participants may observe the trial proceedings but generally should have their outgoing video off and their audio on mute (unless directed otherwise by the Judge or Courtroom Deputy). This will enable all participants to select "Hide Nonvideo Participants" in Zoom settings and focus their attention on the video images of participants who are actively involved in the trial.

Identification of Non-Participant Observers (Public Access)

The Regional Office (Region 3) will have the responsibility of advising any members of the public (non-participant observers) about how they may access the trial. Parties may also share copies of the PDF Zoom invitation with any known non-participant observers, but also must provide the Region, **by Noon (Eastern time) on the business day before the trial date**, the names and email addresses of any such known non-participant observers. The Region must then provide a list of all non-participant observers to the Judge and Courtroom Deputy **by 5:00 pm (Eastern time) on the business day before the next trial date**. The Judge and Courtroom Deputy will use the list to manage access to the trial.

Identified non-participant observers may observe the Zoom trial by video and/or audio but must have their outgoing audio on mute and their outgoing video turned off throughout the trial (unless directed otherwise by the Judge or Courtroom Deputy). Non-participant observers may not disrupt the trial in any way and may be subject to removal and other sanctions if they disrupt the trial or violate the Judge's instructions.

Prohibition of Videotaping or Recording the Trial

The official court reporter is the only individual permitted to record the trial. Accordingly, do not video record, audio record, broadcast, televise, stream, screenshot, photograph, or otherwise copy the trial. Violation of this rule may result in removal and other sanctions.

¹This guideline does not preclude another attorney from turning their video and/or audio on if the need arises to speak briefly during the trial.

Exhibits

To facilitate the trial, it is requested that all parties email their potential exhibits to the Judge, the Courtroom Deputy, the court reporter, all other counsel, and the parties' own witnesses before the witness testifies. Jencks materials are not covered by this request, as those materials need not be provided until requested for cross examination.

As an alternative to email, the parties may request that the agency create secure NLRB SharePoint webpages for this case. Exhibits can be uploaded to Sharepoint, where they can be viewed by those with authorized access (such as an individual party, which may then provide access, as needed, to the Judge, Courtroom Deputy, court reporter, and/or other parties). Sharepoint may be required if a party intends to introduce an audio or video exhibit, or a large exhibit that cannot be transmitted by email. The agency requires at least three business days advance notice to set up a Sharepoint webpage.

All exhibits should, where possible, be pre-marked, paginated, and converted into one bookmarked PDF file per party. Please redact all personally identifiable information (PII, such as social security numbers, dates of birth, etc.) from your exhibits, and have an unredacted copy available for review if necessary.

Jencks Statements

Jencks statements, such as affidavits given to the General Counsel, will be provided (by email or another method) to opposing counsel upon request for cross examination. After cross-examination, opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

Additional Appropriate Safeguards

Informed, but not controlled, by Board Rule 102.35(c), I will implement various appropriate safeguards to ensure that I and the parties have the ability to assess each witness' credibility and that the parties have a meaningful opportunity to examine and cross examine each witness. See *William Beaumont Hospital*, 370 NLRB No. 9 (2020) (noting that Board Rule 102.35(c) contemplates the taking of a single witness' testimony via video transmission during an in-person hearing, but is not controlling in a hearing conducted entirely by videoconference). Appropriate safeguards will generally include, but are not limited to:²

1. Before taking testimony, ensuring that I, all trial participants and the hearing reporter are able to hear the testimony and observe the witness, and ensuring that the witness is able to hear all other trial participants;
2. Upon request, having the witness adjust their camera view to show whether any other individuals are present in the room where the witness is located;

²Board Rule 102.35(c)(2) lists, as one safeguard, providing the opportunity of party representatives to be present at the remote location where the witness will be located when testifying. I will not be employing that safeguard because it is inconsistent with the physical distancing safety procedures that we all must follow due to the ongoing Coronavirus (Covid-19) pandemic.

3. Generally requiring the parties to provide copies of any exhibits to me, the witness, and all counsel of record before starting their examination (i.e., before starting direct, cross, or redirect);³ and

4. Having video technology assistance available to assist with technical difficulties that may arise during the hearing (e.g., assistance from the Courtroom Deputy or agency information technology staff). Ultimately, I will determine in my discretion whether it is feasible and appropriate to proceed with each witness' testimony by videoconference.⁴

IT IS SO ORDERED.

Dated: September 15, 2020 Washington, D.C.

A handwritten signature in black ink, appearing to read "David CIL", written over a horizontal line.

David I. Goldman
U.S. Administrative Law Judge

³This requirement will not preclude counsel from sharing, at a later point, additional exhibits that counsel may need to use to address issues in the witness' testimony, or certain exhibits that counsel may wish to hold in reserve as part of their litigation strategy.

⁴ If I determine that it is not feasible to receive a witness' testimony by videoconference at a particular time, the remedies may include rescheduling the witness for a later trial date and/or having the relevant party take additional steps to ensure that the witness can access and participate in the Zoom hearing.

EXHIBIT A

ATTORNEY/REPRESENTATIVE INSTRUCTIONS AND GUIDELINES FOR VIDEO HEARINGS

Due to the compelling circumstances created by the COVID-19 pandemic, the Administrative Law Judge will conduct the hearing in this matter on the Zoom for Government videoconferencing platform. The following guidelines and instructions are for the attorneys and/or representatives who will be participating in the video hearing. (There are separate instructions for individuals who expect to testify as witnesses in the video hearing.)

Before the Video Hearing

Technology Requirements

To participate in the hearing, you will need access to a reliable internet connection and a device you can use to participate in the hearing by audio and video. It is recommended that you use a computer or laptop with a microphone, speaker and a web camera. In the alternative, you may use a smartphone or tablet, but those devices may be less effective if/when you need to receive and review documents. Regardless of the device you use, it is recommended that you use a headset or earphones with a microphone to help reduce feedback and background noise.

The hearing will be conducted on the Zoom videoconferencing platform. Accordingly, you should load the Zoom application on the device you will be using, and verify that you can connect to Zoom by doing a test connection at <https://zoom.us/test>.

It is also recommended that you set up a free Zoom account using your first and last name and your email address. By setting up a Zoom account in that manner, your first and last name will appear when you join the hearing, which will make it easier to identify you as an attorney/representative. You may set up a Zoom account at: <https://zoom.us>.

In addition to setting up their own account/access, counsel are responsible for ensuring that their witnesses have the equipment and internet access necessary to fully participate in the Zoom video hearing. Please bring any issues to the ALJ's attention as soon as possible.

It is highly recommended that you practice using Zoom with your witnesses before the hearing, including practice with handling and reviewing exhibits.

Agency Courtroom Deputy

In some cases, the ALJ may have a courtroom deputy present to assist with certain tasks during the video hearing. Courtroom deputies may (among other tasks): manage who is permitted to join the video hearing; set up breakout rooms for individuals to confer privately; display exhibits if requested by one of the parties; and assist with general Zoom troubleshooting/questions. All courtroom deputies are attorneys from the "Board-side" of the agency (i.e., the staff of a Board Member, the Office of the Executive Secretary, or the Solicitor's Office) and will be screened from working on the case if it comes before the Board.

Invitation to Video Hearing (Participants and Observers)

All counsel of record and unrepresented parties will receive an email invitation to attend the video hearing. The invitation will contain a link to "Join ZoomGov Meeting" and a "Meeting ID" and "Password" for participants to join through Zoom. The General Counsel is responsible for forwarding the invitation to the court reporter and any interpreter(s). Counsel and unrepresented

parties are responsible for notifying their witnesses (or the witnesses' counsel) about the hearing and applicable instructions/guidelines.

It is permissible for individuals (non-witnesses) to observe the hearing. To ensure appropriate access to the hearing, however, counsel will need to provide the ALJ/courtroom deputy with a list of all hearing participants and observers, along with each individual's name, email address, telephone number and role in the proceeding. The ALJ/courtroom deputy will use the list to allow access to the hearing and, when needed, correctly assign individuals to breakout rooms or the waiting room. The list generally must be provided to the ALJ/courtroom one business day before the hearing, but may be amended as appropriate to accommodate new witnesses or observers. The list will not be part of the evidentiary record.

Hearing Preparation

Before the hearing, all participants should take the following steps:

1. Set up computer, laptop, tablet or smartphone in a well-lit and quiet room with no distractions, and with the strongest light source in front of you;
2. Position the web camera at or slightly above eye level;
3. Test your equipment and internet connection (www.zoom.us/test);
4. Close out and avoid running unnecessary applications besides Zoom during the hearing;
5. To the extent possible, limit the number of other devices connected to the internet/wifi service at your location during the hearing;
6. Mute sounds from other applications (e.g., email notifications, chat messaging, etc.); and
7. Plug device into a good power source.

Joining the Hearing

1. Participants must join the video hearing at least 5 minutes before the scheduled start time by clicking the "Join ZoomGov Meeting" link in the invitation or clicking "Join a Meeting" in Zoom and entering the Meeting ID and Password. If asked whether to open Zoom in your browser or in the Zoom app, open in the Zoom app. Select "Join by Computer Audio," even if connecting via smartphone or tablet.
2. Upon joining the virtual hearing, each participant will initially appear in a Waiting Room. The ALJ or courtroom deputy will admit counsel and parties into the video hearing room. Unless otherwise ordered, witnesses will remain in the Waiting Room until called to testify.
3. The video hearing is an official proceeding. Please approach the hearing with the same level of respect and civility that you would approach an in-person proceeding in a courthouse, and accordingly wear appropriate clothing and use appropriate language.
4. *Microphone and Video:* When each participant is admitted to the video hearing room, the participant's video should be on and audio should be muted until the hearing or any pre-trial discussions begin. To the extent necessary, the ALJ or courtroom deputy may mute any participant's microphone and/or turn off a participant's video during the hearing.

During the Hearing

1. The court reporter is the only person authorized to record the hearing. Participants and observers may not record, duplicate, screenshot or save any audio or video of the video hearing, including conferences or sidebars.
2. Participants must speak one at a time and pause before speaking in case there is any “lag” or delay in the audio/video feed. Before speaking, counsel should wait for the witness to finish her or his answer, and the witness should wait for counsel to finish his or her question. If there is an objection, the witness should stop speaking and wait for instruction from the ALJ.
3. While testifying, witnesses may not communicate with anyone else about their testimony (including during breaks), and may not review any documents, devices, or other items unless asked to do so by the ALJ or by an attorney as part of a question during testimony.
4. In most hearings, the Chat feature in Zoom will be turned off. Attorneys may use their cell phones to text their co-counsel and/or an individual designated as essential to assisting the attorney with presenting her case. Texting is not permitted with a designee while that person is on the stand testifying as a witness.
5. Counsel may ask the ALJ for the opportunity to confer with clients privately during the hearing. The ALJ/courtroom deputy will send counsel and the client(s) into a Zoom Breakout Room where the attorney and client may confer privately. The ALJ/courtroom deputy may send chats to counsel in a Breakout Room for status updates, and may set a time limit for completing discussions in the Breakout Room and returning to the video hearing. When finishing a session in a Breakout Room, do not click on “Leave Meeting” because doing so will end your connection to the Zoom hearing (though you can reconnect by repeating the login process).
6. Counsel may request a sidebar with counsel and the ALJ. The ALJ/courtroom deputy will send counsel into a Breakout Room for the sidebar. At the end of the sidebar, counsel will all return to the video hearing room.

Exhibits

1. Counsel have the following options for sharing exhibits:
 - (a) Email a pdf copy of the exhibit to the witness and hearing participants, who would then need to open the file and review it;
 - (b) Use Zoom’s share screen feature to show the witness (and everyone else in the video hearing) a copy of the exhibit as it appears on your own device screen;
 - (c) Email the exhibit to the courtroom deputy who can then use Zoom’s share screen feature to display the exhibit at the attorney’s request;
 - (d) Upload the exhibit to an agency webpage that can be accessed by the ALJ and all parties [note – if this option is desired, the agency generally needs three business days’ notice to set up the webpage]; or
 - (e) Use Zoom’s chat feature to send a pdf copy of the exhibit to the witness and other selected hearing participants. The witness and hearing participants would then need to download and open the file and review it [note – this option may not work if the intended recipient is using a smartphone or tablet].

Each of these options has advantages and limitations. Counsel should consider and experiment with each option to determine which will best meet their needs.

2. Exhibits should be in pdf format and pre-marked (or saved) by Exhibit Number. You may save each exhibit as a separate pdf file, or you may create a single pdf file with bookmarks that allow the reader to select each individual exhibit. Please identify each exhibit with: initials that identify the party presenting the document and the exhibit number (e.g., "GC Exh. ," "CP Exh. ," or "R. Exh. "); and a brief description of the document (e.g., (2017-2020 Collective-Bargaining Agreement), (November 21, 2019 Disciplinary Warning Issued to John Smith), or (January 2, 2020 Information Request)).
3. Any exhibit with multiple pages must be clearly paginated (e.g., "Page_ of_ .") or Bates Stamped.
4. Counsel must make sure all personally identifiable information (PII) other than names (e.g., social security number, date of birth, address, telephone number, etc.) is redacted from exhibits before the exhibits are proffered to a witness. This step is particularly important if you will be using Zoom's screen share function to present an exhibit to a witness during trial, because other hearing participants (including observers) will be able to see the exhibit on their device screens.
5. Large exhibits, such as audio or video files, may require special handling since they may not be transmittable over email. Accordingly, counsel should notify the ALJ/courtroom deputy about any such exhibits at least three business days before the trial to allow time for the agency to set up a webpage where the large exhibit may be uploaded and accessed by the ALJ and other parties.
6. Counsel are responsible for making sure the court reporter receives and is able to open/access all exhibits that are admitted into the evidentiary record or are offered for inclusion in a rejected exhibit file.

EXHIBIT B

WITNESS INSTRUCTIONS AND GUIDELINES FOR VIDEO HEARINGS

You are receiving these instructions because you may be appearing as a witness in a National Labor Relations Board hearing. Due to the compelling circumstances created by the COVID-19 pandemic, the Administrative Law Judge (“ALJ”) will conduct the hearing using the Zoom videoconferencing platform. The guidelines and instructions for the video hearing are as follows:

Before the Video Hearing

Technology Requirements

To participate in the hearing, you will need access to a reliable internet connection and a device you can use to participate in the hearing by audio and video. It is recommended that you use a computer or laptop with a microphone, speaker and a web camera. In the alternative, you may use a smartphone or tablet, but those devices may be less effective if/when you need to receive and review documents. Regardless of the device you use, it is recommended that you use a headset or earphones with a microphone to help reduce feedback and background noise.

The hearing will be conducted on the Zoom videoconferencing platform. Accordingly, you should load the Zoom application on the device you will be using, and verify that you can connect to Zoom by doing a test connection at <https://zoom.us/test>.

It is also recommended that you set up a free Zoom account using your first and last name and the email address that you will provide to your attorney or the attorney calling you as a witness. By setting up a Zoom account in that manner, your first and last name will appear when you join the hearing, which will make it easier to identify you as a witness. You may set up a Zoom account at: <https://zoom.us>.

If you have any problems setting up a Zoom account or obtaining the necessary equipment and/or internet access, please contact your attorney, or the attorney calling you as a witness, as soon as possible. It is strongly recommended that you practice using Zoom before testifying at the hearing.

Invitation to Video Hearing

One of the attorneys (most likely your attorney or the attorney calling you to testify as a witness) will provide you with an email copy of the invitation to attend the video hearing. The invitation will contain a link to “Join ZoomGov Meeting” and a “Meeting ID” and “Password” that you can use to participate in the video hearing through Zoom. You (or your attorney) should communicate with the attorney calling you to estimate when you will be needed to testify. Do not share the contents of the invitation with others as participation in the hearing may be limited. If you know someone who would like to listen to the hearing, please discuss it with your attorney or the attorney who sent you the Zoom invitation and be prepared to provide the individual's name, email address and telephone number.

Hearing Preparation

Before the hearing, please take the following steps:

1. Set up your computer, laptop, tablet or smartphone in a well-lit and quiet room with no distractions, and with the strongest light source in front of you;
2. Position the web camera at or slightly above eye level;

3. Test your equipment and internet connection (www.zoom.us/test);
4. Turn off any virtual background on Zoom;
5. Close out and avoid running unnecessary applications besides Zoom during the hearing;
6. To the extent possible, limit the number of other devices connected to the internet/wifi service at your location during the hearing;
7. Mute sounds from other applications (e.g., email notifications, chat messaging, etc.); and
8. Plug your device into a good power source.

If you have any issues, please contact your attorney or the attorney calling you as a witness.

Joining the Hearing

1. The attorney who has called you as a witness will notify you (or your attorney) about when to log into Zoom and be available to testify. Because the exact time for your testimony may change, please provide the attorney with multiple ways to contact you (e.g., telephone, cell phone, email), and be on standby to log on to Zoom and testify on short notice.
2. Please join the video hearing at least 5 minutes before the time you are asked to testify. You can join the hearing by clicking the “Join ZoomGov Meeting” link in the invitation or clicking “Join a Meeting” in Zoom and entering the “Meeting ID” and “Password.” If you receive a message asking whether to open Zoom in the browser or in the Zoom app, select the Zoom app. Select “Join by Computer Audio,” even if you are connecting via smartphone or tablet.
3. When you join the Zoom hearing, you will first see that you are in a Zoom “Waiting Room.” Please do not disconnect from the Waiting Room. The ALJ will receive a message that you are in the Waiting room, and will bring you into the video hearing when it is your turn to testify.
4. The video hearing is an official court proceeding. Please approach the hearing with the same level of respect that you would approach an in-person proceeding in a courthouse, and accordingly wear appropriate clothing and use appropriate language.
5. Your video should be on when you join the video hearing. If your audio is on “Mute,” as indicated by a microphone symbol with a slash mark at the bottom of your device screen, then no one will be able to hear you when you speak during the video conference. You may “Unmute” yourself by clicking on the microphone symbol one time, which will remove the slash mark on the microphone symbol and allow everyone to hear you when you testify.

During the Hearing

1. The court reporter is the only person authorized to record the hearing. Participants, witnesses and observers may not record, duplicate, save or photograph any video or audio portions of the proceeding, including conferences or sidebars.
2. Please do not talk over another person. Due to the potential for the audio and/or video connection to “lag” or delay, pause before speaking to avoid having more than one person speaking at the same time. Consistent with that guideline, please wait for the attorney to finish her or his question before starting your answer. If one of the attorneys makes an objection, please stop speaking and wait for instruction from the ALJ.

3. While testifying, you may not communicate with anyone else about your testimony (including during breaks), and you may not review any documents, devices, or other items unless the attorney or ALJ asks you to do so as part of a question they pose during your testimony. You may be asked to use your camera to show your surroundings before or while testifying.

4. During the trial, the attorneys may ask you to look at an exhibit. They may show you the document on your device screen, or if allowed, they may electronically send you the document. Please make sure you have provided an email address that you can access during the hearing. You should answer any questions about the exhibit, and then put the exhibit aside once the attorney moves on to another line of questions.

5. At the end of your testimony, the ALJ will give you some final instructions, including the instruction to not tell any other possible witness about your testimony. The ALJ will then advise you when to disconnect from the Zoom video hearing. One of the attorneys will contact you if you need to appear again to provide additional testimony.

6. If you experience any connection or technology related issues during the hearing, please immediately notify the ALJ and/or the attorney who called you as a witness.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

OTG MANAGEMENT PHL, LLC

and

Case 04-CA-243769

UNITE HERE LOCAL 274

*ORDER REQUIRING SEPTEMBER 10, 2020 HEARING IN
THIS MATTER TO BE CONDUCTED BY VIDEOCONFERENCE*

Confirming the Regional Director's Order, dated June 30, 2020, the hearing in this matter, scheduled to begin at 10:00 a.m. (EDT) on September 10, 2020, will be conducted remotely via videoconference using Zoom technology and under appropriate safeguards.

Access, Instructions, and Guidelines Regarding Zoom Hearing

The following instructions and guidelines addresses how identified participants and non-participant observers may access and conduct themselves during the aforementioned Zoom unfair labor practice hearing.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you may join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer or laptop by hovering over the Resources tab in the upper right of the screen and selecting "Download Zoom Client." If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the "zoom.gov.com" link below. Alternatively, you can click on "Join a Meeting" in your Zoom app and enter the meeting code. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser.

When you enter, select “Join by Computer Audio” (even if you are connecting via a smart phone). You will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and networking.

Join Zoom.Gov Meeting

<https://www.zoomgov.com/j/1605742708?pwd=NVVKMxIxRnZRN05jRkhRT2JtMEdoUT09>

Meeting ID: 160 574 2708

Password: 389033

One tap mobile

+16692545252,,1605742708#,,,0#,,389033# US (San Jose)

+16468287666,,1605742708#,,,0#,,389033# US (New York)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

833 568 8864 US Toll-free

Meeting ID: 160 574 2708

Password: 389033

Find your local number: <https://www.zoomgov.com/u/ajcbDEfkP>

Join by SIP

1605742708@sip.zoomgov.com

Join by H.323

161.199.138.10 (US West)

161.199.136.10 (US East)

Meeting ID: 160 574 2708

Password: 389033

Join by Skype for Business

<https://www.zoomgov.com/skype/1605742708>

If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or call the “bailiff/co-host” (to be assigned within two weeks of the hearing date) for assistance. The bailiff/co-host will be a staff attorney from the Board side of the National Labor Relations Board. In the latter case, the bailiff/co-host will have been screened from working on this case if it comes before the Board. The bailiff/co-host will assist the trial Judge with Zoom technical issues throughout the hearing and will be recused from any involvement in the future review of this case by the Board. If you cannot reach the bailiff/co-host, call the Judges Division at 202-501-8800 for assistance.

II. List of individuals who may join the meeting, including Non-participant Observers (public access)

No later than 10:00 am (EDT) on September 9, 2020, counsel must email the co-host/bailiff and court reporter a list of all hearing participants and anticipated non-participants. These lists are for procedural use only and will not be part of the record. They must include the individual's name, email address, telephone number and role in the proceeding. The lists are necessary for the co-host/bailiff to allow appropriate access to the proceeding and correctly assign individuals to breakout rooms or the waiting room.

The parties will not be precluded from calling witnesses who are not on either list if necessary for the presentation of their case. However, counsel are reminded of the potential ramifications if it is subsequently determined that the sequestration order was violated. Accordingly, identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the Judge's instructions, they may be subject to removal and other sanctions.

III. Additional Instructions and Guidelines

No videotaping or recording

DO NOT VIDEOTAPE, BROADCAST, TELEWISE, AUDIO RECORD, OR PHOTOGRAPH, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER. Violation of this rule or causing disruptions may result in removal and other sanctions.

Providing all potential exhibits to the Judge, Reporter, Co-host/bailiff, your witnesses and opposing parties in advance of hearing

It would greatly facilitate the conduct of the hearing if the parties emailed all of their potential exhibits to the Judge, co-host/bailiff, court reporter, their own witnesses and opposing counsel no later than 10:00 a.m. (EDT) on September 9, 2020. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the complaint may be witnesses. Therefore, the parties are requested to provide any exhibits they plan to use with such witnesses to opposing counsel in advance-with the exception of Jencks materials.

All exhibits should be pre-marked, paginated and converted into one bookmarked PDF file per party.

All confidential personal identifying information such as Social Security Numbers, birth dates, addresses and telephone numbers should be redacted from the exhibits.

Calling witnesses and forwarding the electronic meeting invitation (“e-vite”)

Counsel must forward the e-vite to their witnesses. When counsel forwards the e-vite, counsel should take care not to also forward the email address of the Judge or the bailiff. The Judge and bailiff will automatically receive notification through Outlook that the e-vite has been forwarded. Counsel must also ensure that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing.

Witnesses may not use a virtual background. Opposing counsel must be able to see who, if anyone, is in the room with them when they testify.

The Judge or bailiff/co-host will admit witnesses into the hearing from the waiting room.

Conferring via the Zoom breakout room function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room.

The Judge or his co-host will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

Jencks Statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email or the Zoom chatroom function, after a witness has testified on direct examination. After cross-examination opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

Showing documents to witnesses during examination

Computer email is the best option in that each participant can follow along at his or her own pace. Counsel may also use the “Share Screen” tool to share a document on the screen or use the Zoom group chat function to send a document as an attachment to a witness, other counsel, the Judge, and the reporter. However, the chat approach is not recommended unless absolutely necessary because it has proven cumbersome and shown to slow down computer functions and distort screen views.

If screen shared, counsel may scroll down the document page by page or go to a particular page; or counsel could give control over the document to another participant on request, who may scroll through it.

If sent as an attachment in group chat, everyone may download and view the document on their own. Ensure exhibits are properly marked, paginated, and bookmarked before the hearing or before being offered into the record as an exhibit.

The Judge may ask witnesses to move the camera to show their surroundings.

Offering exhibits into the record

Email is the recommended method for sharing exhibits. Counsel may also use the Zoom screen-share or group chat function to send exhibits to other counsel, the Judge, and the reporter if they have not already done so; they can then download it to their computer as an admitted exhibit.

Counsel are instructed to share this Order/Guidelines with the party it represents, witnesses and persons who request to observe the hearing through counsel or the party it represents.

Dated Washington, D.C.
July 9, 2020



Michael A. Rosas
Administrative Law Judge

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SALEM COUNTY HOSPITAL CORP., d/b/a SALEM
MEDICAL CENTER

and

Cases 04-CA-244122 and
04-CA-249453

HEALTH PROFESSIONALS AND ALLIED
EMPLOYEES LOCAL 5142

Prehearing Order: Access, Instructions, and Guidelines Regarding Zoom Hearing

The following order addresses how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on Monday, July 28, 2020 at 10:00 a.m. Eastern time. It also includes additional instructions and guidelines regarding the conduct of the Zoom hearing.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you may join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer or laptop by hovering over the Resources tab in the upper right of the screen and selecting "Download Zoom Client." If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the "Join Zoom" link below. Alternatively, you can click on "Join a Meeting" in your Zoom app and enter the meeting code. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser.

When you enter, select "Join by Computer Audio" (even if you are connecting via a smart phone). You will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and networking.

Judge Rosas is inviting you to a scheduled ZoomGov meeting.

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1610237005?pwd=VWxrT1BBZERpUXN1T1J6QjkvOGZwQT09>

Meeting ID: 161 023 7005

Password: 695868

One tap mobile

+16692545252,,1610237005#,,1#,695868# US (San Jose)

+16468287666,,1610237005#,,1#,695868# US (New York)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

833 568 8864 US Toll-free

Meeting ID: 161 023 7005

Password: 695868

Find your local number: <https://www.zoomgov.com/u/abxkjTrgIh>

Join by SIP

1610237005@sip.zoomgov.com

Join by H.323

161.199.138.10 (US West)

161.199.136.10 (US East)

Meeting ID: 161 023 7005

Password: 695868

Join by Skype for Business

<https://www.zoomgov.com/skype/1610237005>

If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or call Mark Eskenazi, at 202-273-1080 for assistance. Mr. Eskenazi is an attorney in the Executive Secretary's office. He will be acting as a "bailiff/co-host" to assist the trial judge with Zoom technical issues throughout the hearing. If you cannot reach Mr. Eskenazi, call the Judges Division at 202-501-8800 for assistance.

II. List of individuals who may join the meeting, including Non-participant Observers (public access)

No later than 10:00 am ET on July 27, 2020, counsel must email the Judge, co-host/bailiff and court reporter a list of all hearing participants to which counsel has sent the access information. This list is for procedural use only and will not be part of the record. The list must include the individual's name, email address, telephone number and role in the proceeding. This list is necessary for the ALJ to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room. However, parties will not be precluded from calling witnesses who are not on this list if necessary for the presentation of their case.

The parties must provide the identity and email addresses of any nonparticipant observers to the Regional Office no later than 10:00 a.m. ET on Friday, July 27. It is the responsibility of the Regional Office to advise nonparticipant observers the manner in which they will be able to access the hearing. Identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

III. Additional Instructions and Guidelines

No videotaping or recording

DO NOT VIDEOTAPE, BROADCAST, TELEWISE, AUDIO RECORD, OR PHOTOGRAPH, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER. Violation of this rule or causing disruptions may result in removal and other sanctions.

Providing all potential exhibits to the Judge, Reporter, Co-host/bailiff, your witnesses and opposing parties in advance of hearing

It would greatly facilitate the conduct of the hearing if the parties emailed all of their potential exhibits to the Judge, co-host/bailiff, court reporter, their own witnesses and opposing counsel no later than 10:00 am ET on July 27. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the complaint may be witnesses. Therefore, the parties are requested to provide any exhibits they plan to use with such witnesses to opposing counsel in advance-with the exception of Jencks materials.

All exhibits should, if at all possible, be pre-marked, paginated and converted into one bookmarked PDF file per party.

All confidential personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the exhibits.

Calling witnesses and forwarding the electronic meeting invitation ("e-vite")

Counsel must forward the e-vite to their witnesses or provide the ALJ with the witnesses' email addresses so that the ALJ or bailiff can send an e-vite to them. When counsel forwards the e-vite, counsel should take care not to also forward the email address of the ALJ or the bailiff.

Counsel must also ensure that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing.

Witnesses may not use a virtual background. Opposing counsel must be able to see who, if anyone, is in the room with them when they testify.

The ALJ or bailiff/co-host will send a witness an e-vite to the Zoom hearing if counsel did not already forward an e-vite.

The ALJ or bailiff/co-host will admit witnesses into the hearing from the waiting room.

Conferring via the Zoom breakout room function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room.

The Judge or his co-host will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

Jencks Statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email or the Zoom chatroom function, after a witness has testified on direct examination. After cross-examination opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

Showing documents to witnesses during examination

Counsel may use the “Share Screen” tool to share a document on the screen or use the Zoom group chat function to send a document as an attachment to a witness, other counsel, the ALJ, and the reporter. However, computer email may be a better option in that each participant can follow along at his or her own pace.

If shared, counsel may scroll down the document page by page or go to a particular page; or counsel could give control over the document to another participant on request, who may scroll through it.

If sent as an attachment in group chat, everyone may download and view the document on their own. Ensure exhibits are properly marked, paginated, and bookmarked before the hearing or before being offered into the record as an exhibit.

The Judge may ask, upon the request of a party, witnesses to move the camera to show their surroundings.

Offering exhibits into the record

Counsel may email or use the Zoom group chat function to send an exhibit to other counsel, the ALJ, and the reporter if they have not already done so; they can then download it to their computer as an admitted exhibit. However, Email is the recommended method for sharing exhibits.

Counsel are encouraged to share this Order/Guideline with the party it represents, witnesses and persons who request to observe the hearing through counsel or the party it represents.

Dated Washington, D.C.
June 19, 2020

A handwritten signature in black ink, appearing to read "Michael A. Rosas". The signature is fluid and cursive, with the first name "Michael" and last name "Rosas" being clearly legible.

Michael A. Rosas
Deputy Chief Administrative Law Judge

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SMYRNA READY MIX CONCRETE, LLC

and	Case Nos. 09-CA-251578
	09-CA-252487
GENERAL DRIVERS, WAREHOUSEMEN AND	09-CA-255573
HELPERS, LOCAL UNION NO. 89, AFFILIATED	09-CA-258273
WITH THE INTERNATIONAL BROTHERHOOD	
OF TEAMSTERS	

Prehearing Order: Access, Instructions, and Guidelines Regarding Zoom Hearing

The following order addresses how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on Monday, June 29, 2020 at 10:00 a.m. Eastern time. It also includes additional instructions and guidelines regarding the conduct of the Zoom hearing.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you may join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer or laptop by hovering over the Resources tab in the upper right of the screen and selecting "Download Zoom Client." If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the "Join Zoom" link below. Alternatively, you can click on "Join a Meeting" in your Zoom app and enter the meeting code. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser.

When you enter, select "Join by Computer Audio" (even if you are connecting via a smart phone). You will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and networking.

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1617872575?pwd=bjZiaFQ3ZGcwZHM0c0ZrU01CVE9tUT09>

Meeting ID: 161 787 2575

Password: 451831

If you are unable for some reason to join the meeting online using the Zoom app or web browser and need assistance, you may join the meeting by calling the appropriate phone number below and entering the meeting ID and password when prompted.

One tap mobile

+16692545252,,1617872575#,,1#,451831# US (San Jose)

+16468287666,,1617872575#,,1#,451831# US (New York)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

833 568 8864 US Toll-free

Meeting ID: 161 787 2575

Password: 451831

Find your local number: <https://www.zoomgov.com/join/abxeMB13nx>

Join by SIP

1617872575@sip.zoomgov.com

Join by H.323

161.199.138.10 (US West)

161.199.136.10 (US East)

Meeting ID: 161 787 2575

Password: 451831

Join by Skype for Business

<https://www.zoomgov.com/skype/1617872575>

If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or call Mark Eskenazi, at 202-273-1080 for assistance. Mr. Eskenazi is an attorney in the Executive Secretary's office. He will be acting as a "bailiff/co-host" to assist the trial judge with Zoom technical issues throughout the hearing. If you cannot reach Mr. Eskenazi, call the Judges Division at 202-501-8800 for assistance.

II. List of individuals who may join the meeting, including Non-participant Observers (public access)

No later than 10:00 am ET on Friday, June 26, counsel must email the Judge, co-host/bailiff and court reporter a list of all hearing participants to which counsel has sent the access information. This list is for procedural use only and will not be part of the record. The list must include the individual's name, email address, telephone number and role in the proceeding. This list is necessary for the ALJ to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room. However, parties will not be precluded from calling witnesses who are not on this list if necessary for the presentation of their case.

The parties must provide the identity and email addresses of any nonparticipant observers to the Regional Office no later than 10:00 a.m. ET on Friday, June 26. It is the responsibility of the Regional Office to advise nonparticipant observers the manner in which they will be able to access the hearing. Identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

III. Additional Instructions and Guidelines

No videotaping or recording

DO NOT VIDEOTAPE, BROADCAST, TELEWISE, AUDIO RECORD, OR PHOTOGRAPH, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER. Violation of this rule or causing disruptions may result in removal and other sanctions.

Providing all potential exhibits to the Judge, Reporter, Co-host/bailiff, your witnesses and opposing parties in advance of hearing

It would greatly facilitate the conduct of the hearing if the parties emailed all of their potential exhibits to the Judge, co-host/bailiff, court reporter, their own witnesses and opposing counsel no later than 10:00 am ET on Friday, June 26. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the complaint may be witnesses. Therefore, the parties are requested to provide any exhibits they plan to use with such witnesses to opposing counsel in advance-with the exception of Jencks materials.

All exhibits should, if at all possible, be pre-marked, paginated and converted into one bookmarked PDF file per party.

All confidential personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the exhibits.

Calling witnesses and forwarding the electronic meeting invitation ("e-vite")

Counsel must forward the e-vite to their witnesses or provide the ALJ with the witnesses' email addresses so that the ALJ or bailiff can send an e-vite to them. When counsel forwards the e-vite, counsel should take care not to also forward the email address of the ALJ or the bailiff.

Counsel must also ensure that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing.

Witnesses may not use a virtual background. Opposing counsel must be able to see who, if anyone, is in the room with them when they testify.

The ALJ or bailiff/co-host will send a witness an e-vite to the Zoom hearing if counsel did not already forward an e-vite.

The ALJ or bailiff/co-host will admit witnesses into the hearing from the waiting room.

Conferring via the Zoom breakout room function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room.

The Judge or his co-host will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

Jencks Statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email or the Zoom chatroom function, after a witness has testified on direct examination. After cross-examination opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

Showing documents to witnesses during examination

Counsel may use the “Share Screen” tool to share a document on the screen or use the Zoom group chat function to send a document as an attachment to a witness, other counsel, the ALJ, and the reporter. However, computer email may be a better option in that each participant can follow along at his or her own pace.

If shared, counsel may scroll down the document page by page or go to a particular page; or counsel could give control over the document to another participant on request, who may scroll through it.

If sent as an attachment in group chat, everyone may download and view the document on their own. Ensure exhibits are properly marked, paginated, and bookmarked before the hearing or before being offered into the record as an exhibit.

The Judge may ask, upon the request of a party, witnesses to move the camera to show their surroundings.

Offering exhibits into the record

Counsel may email or use the Zoom group chat function to send an exhibit to other counsel, the ALJ, and the reporter if they have not already done so; they can then download it to their computer as an admitted exhibit. However, Email is the recommended method for sharing exhibits.

Counsel are encouraged to share this Order/Guideline with the party it represents, witnesses and persons who request to observe the hearing through counsel or the party it represents.

Dated Washington, D.C.

June 18, 2020

A handwritten signature in cursive script that reads "Arthur J. Amchan".

Arthur J. Amchan
Deputy Chief Administrative Law Judge

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, (IBT), LOCAL 957
(United Parcel Service)

and

Case 09-CB-255762

RYAN BLACK, AN INDIVIDUAL

ORDER REQUIRING THE AUGUST 26, 2020 HEARING IN THIS MATTER TO BE
CONDUCTED BY VIDEOCONFERENCE

The hearing in this matter is currently scheduled to begin at 9:00 a.m. (ET) on August 26, 2020, at the hearing Room 3-111, John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio, and on consecutive days thereafter. On June 22, 2020, I held a telephone conference call with counsel to solicit their questions, concerns, and positions on conducting this hearing in-person or via videoconferencing using the Zoom for Government platform. Based on Counsel's statements as to the hurdles to an in-person hearing, I hereby order that, per Section 102.35(c) of the Board's Rules and Regulations, due to the "compelling circumstances" created by the current Coronavirus Disease (COVID-19) pandemic, the hearing in this case will be conducted remotely via videoconference using Zoom technology, *see, Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020). The hearing will commence, as scheduled at 9:00 a.m. on August 26, 2020.

While I have discussed the parameters of a videoconference hearing with the parties, attached are the procedural guidelines and witness instructions for conducting the hearing using Zoom. (See Attachments A and B.) I will disseminate a separate pdf document containing access information for the hearing as is discussed in the attachments. I will hold additional videoconferences, using Zoom, to allow counsel to familiarize themselves with the technology and its features.

Dated at Washington, D.C. June 25, 2020.



Kimberly R. Sorg-Graves
Administrative Law Judge

ATTACHMENT A

PROCEDURAL GUIDELINES FOR VIDEO HEARINGS

TECHNOLOGY:

Requirements

All participants (i.e., attorneys, representatives, and witnesses) must use a: (1) a computer, laptop, tablet, or smartphone able to run the “Zoom” videoconferencing platform; (2) a connected webcam/camera and a microphone; and (3) a reliable, high-speed internet connection. Smartphones and tablets only may be used with a headset or earbuds with a microphone, and the device must remain stationary during testimony. A computer or laptop with audio/video capability is highly recommended. A second option is to use a smart phone or tablet to access the video-hearing and a second electronic device to view documents, if possible.

It is recommended that participants have a Zoom (free) account tied to the email address they provide to counsel so their profile, with their first and last name, appears when they join the video hearing.

Test your connection and setup prior to the hearing at <https://zoom.us/test>

The following are links to resources to familiarize yourself with the Zoom basics (Right Click and “Open Hyperlink”):

General Overview

<https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-Tutorials>

Join a Meeting:

<https://support.zoom.us/hc/en-us/articles/201362193>

Testing Audio and Video:

<https://support.zoom.us/hc/en-us/articles/201362283-Testing-computer-or-device-audio>

Audio Echo (Feedback):

<https://support.zoom.us/hc/en-us/articles/202050538-Audio-Echo-In-A-Meeting>

Sharing a Screen/Document through Zoom:

<https://support.zoom.us/hc/en-us/articles/201362633-How-Do-I-Start-A-Screen-Share-Meeting->

Using Virtual Backgrounds link below; sample backgrounds option 1 & option 2:

https://support.zoom.us/hc/en-us/articles/210707503-Virtual-Background#h_bebf36a4-c1e9-4769-9d3c-e0d01457d341 [Note: For security reasons, witness will not be allowed to use virtual backgrounds.]

Counsel must ensure their witnesses have or have access to the equipment, internet access, and training necessary to fully participate in the Zoom video hearing.

The Judge will provide counsel with a link and information and password to access the Zoom video hearing. Counsel will provide that information only to representatives of the parties and their witnesses in advance of the hearing. Others may join the call as spectators by contacting the Regional Office and supplying their name, email address, and telephone number. Regional Offices maintain lists of individuals that have been barred from proceedings due to past abusive conduct and are best equipped to raise concerns about whether a spectator should be granted access.

The ALJ will disseminate a separate pdf document containing access information for the parties to forward to witnesses and for the General Counsel to provide to the Region. Do not directly forward this email to other individuals, because it contains the ALJ’s and others contact information. Save the pdf and attach it to a new email before sending it. This method should preserve the hyperlinks allowing easier access.

Counsel and the Regional Office must provide the ALJ a list of all individuals to which they have sent the access information. This list is for procedural use only and will not be part of the record. It is to be sent to the ALJ and not the opposing party. The list must include the individual's name, email address, telephone number and role in the proceeding (e.g. co-counsel who will question witnesses, co-counsel not expected to question witnesses, representative, representative who is also a witness, witness, spectator). This list is necessary for the ALJ to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room.

Setting-Up Equipment and Area

- Set up your computer, laptop, or tablet in a well-lit, quiet room with a non-distracting background and with the strongest light source in front of you.
- Station camera at or slightly above eye level (the witness's face and what is in front of them should be visible) and speak directly at the camera, not at the screen. The Judge may ask the witness to move the camera to show their surroundings.
- Headsets or earphones with built-in microphones may help reduce background noise.
- Avoid running unnecessary applications besides Zoom to conserve processing power and networking.
- Mute sounds from all other applications (e.g., email notifications, chat messaging, etc.).
- Plug computer, laptop, tablet or phone into a good power source while at the hearing.
- If possible, avoid sharing your internet/wifi service with others during the hearing.
- Dress the same way you would dress for in-person appearance.

PROCEDURAL MATTERS:

Subpoenaed Documents and Joint Exhibits

- Parties should serve subpoenas as far in advance of hearing as is practical with a goal of no later than 3 weeks prior to the hearing date. If there are issues about the subpoenas, the parties should meet and confer to attempt to resolve those issues. Parties should notify the Judge as soon as possible of subpoena issues they are unable to resolve. The parties should discuss producing subpoenaed documents prior to the hearing.
- The parties should discuss and agree, to the extent possible, on joint exhibits and factual stipulations to expedite matters. If there are exhibits for which one party refuses to include in the joint exhibits but has no viable objections to its relevancy or authenticity, please consider not objecting to the moving party submitting those documents into the record at the outset of the hearing at the same time the joint exhibits are received. To the extent possible prior to the hearing all joint exhibits should be compiled into one file and each party's separate exhibits should each be compiled into one pdf file and labeled and bookmarked as discussed below.
- All confidential personal identifying information such as Social Security Numbers, birth dates, home address, personal email address, personal phone number, etc. must be redacted from the exhibits.
- Confidential documents, such as medical records and Jencks statements, will be shared at the appropriate time during hearing and in an appropriate format to ensure that they are shared with only those who need to see them. Because appropriate safeguards may vary depending on the circumstances, a method will be decided upon after listening to parties' capabilities and concerns. Some possible methods for accomplishing this are:
 - emailed to the necessary party for use while needed and with assurances on the record (and/or in a written affirmation) that all electronic copies are deleted from all mailboxes, files, and trash bins/folders and all paper copies are shredded or will be returned by mail.
 - shared with necessary individuals via "screen share" in a breakout room—prevents public viewing of the document.
 - delivered in sealed envelope to be open while on video conference with a return envelope for the document(s) to be sealed in while still on video camera.

GENERAL GUIDELINES:

- The court reporter is the only person authorized to record the hearing. Any recording by a party or other person of a without the permission of the Judge is prohibited. All participants are deemed to consent to recording.
- Each witness will be administered an oath before testifying. After administering the oath, the witness will be asked if anyone is with them or communicating with them while testifying; and what, if any, materials are in front of them (electronically or otherwise). The witness will be told to put away those materials until directed to review them.
- Participants must speak one at a time and pause prior to speaking in case there is any audio/video lag. Counsel should wait for a witness to finish their answer, and the witness should wait for counsel to finish their question, before speaking. Please wait a few seconds before responding to ensure the speaker is finish. This lag may feel unnatural but is necessary to not talk over each other. Please emphasize this lag time with your witnesses and that they are to stop speaking anytime they hear the word “objection.” If there is an objection, the witness must stop and wait for instruction from the Judge.
- If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room. The Judge or his co-host will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

THE USE OF A BAILIFF:

Depending upon the complexity of the case, I might use an attorney from the Office of the Executive Secretary, the Solicitor’s Office, or a staff attorney of a Board Member as a bailiff to provide technological support. The identity of the bailiff will be provided to the parties prior to the hearing. Any person acting as a bailiff will be screened from working with this case in any subsequent proceedings.

PARTIES EXHIBITS:

- Exhibits should be pre-marked by Exhibit No. (e.g., Jt. Exh. ,” “GC Exh. __,” “CP Exh. __,” or “R. Exh. ____”). All exhibits should be saved in one pdf file and book marked and labeled with the Exhibit No. for each exhibit.
- Again, all confidential personal identifying information such as Social Security Numbers, birth dates, home address, personal email address, personal phone number, etc. must be redacted from the exhibits.
- If an exhibit is multiple pages and not otherwise paginated, the exhibit must be legibly paginated (e.g., “Page __ of ____”).
- It is highly recommended that witnesses receive copies of all exhibits they will be asked to testify about prior to testifying.

ATTACHMENT B

WITNESS INSTRUCTIONS AND GUIDELINES FOR VIDEO HEARINGS

You are receiving these instructions because you may be appearing as a witness in a National Labor Relations Board hearing. Due to the compelling circumstances created by the COVID-19 pandemic, the Administrative Law Judge (“ALJ”) will conduct the hearing using the videoconferencing platform Zoom. The guidelines and instructions for the video hearing are as follows:

Before the Video Hearing

Zoom and Necessary Equipment

You will need a Zoom account. To create a free Zoom account, visit <https://zoom.us>. If you will be using a computer or laptop, you also must download and install Zoom Client. This is done by hovering over the “Resources” tab on the (top right) of the Zoom.us website and selecting “Download Zoom Client.” If you will be using a tablet or smartphone you must download and install Zoom from the App Store. Your Zoom profile must consist of your first and last name. Zoom has several helpful videos and instructions on its website that you may want to review to learn about the technology.

In addition to having Zoom, you must also have access to a reliable internet connection and a device you can use to participate in the hearing by audio *and* video. We recommend that you use a computer or laptop with a microphone, speaker and a web camera. In the alternative, you may use a smartphone or tablet, but those devices may be less effective if/when you need to receive and review documents. Regardless of the device you use, we recommend using a headset or earphones with a microphone to help reduce feedback and background noise.

Invitation to Video Hearing

One of the attorneys (most likely your attorney or the attorney who has called you to testify as a witness) will provide you with an email copy of the invitation to attend the video hearing. The invitation will contain a link to “Join ZoomGov Meeting” and a “Meeting ID” and “Password” that you can use to participate in the video hearing through Zoom. You (or your attorney) should communicate with the attorney calling you to estimate when you will be needed to testify. Do not share the contents of the invitation with others. If you know someone who would like to attend as a spectator, please discuss it with the attorney who sent you the invitation and be prepared to provide the individual’s name, email address, and telephone number.

Hearing Preparation

Before the hearing, please take the following steps:

1. Set up your computer, laptop, tablet or smartphone in a well-lit and quiet room with no one else present and as far from distractions as possible;
2. If possible, make sure the main light source is from behind your device or facing you;
3. Witnesses are not allowed to use virtual backgrounds;
4. Position the web camera at or slightly above eye level where it is stationary/hands free;
5. Test your equipment and internet connection (www.zoom.us/test);
6. Close out and avoid running unnecessary applications besides Zoom during the hearing;
7. To the extent possible, limit the number of other devices connected to the internet/wifi service at your location during the hearing;
8. Mute sounds from other applications (e.g., email notifications, chat messaging, etc.); and

9. Plug your device into a good power source.

If you have any issues, please contact your attorney or the attorney calling you as a witness.

Joining the Hearing

1. The attorney who has called you as a witness will notify you (or your attorney) about when to log into Zoom and be available to testify. Because the exact time for your testimony may change, please provide the attorney with multiple ways to contact you (e.g., telephone, cell phone, email), and be on standby to log on to Zoom and testify on short notice.
2. Please join the video hearing at least 5 minutes before the time you are asked to testify. You can join the hearing by clicking the “Join ZoomGov Meeting” link in the invitation or clicking “Join a Meeting” in Zoom and entering the “Meeting ID” and “Password.” If you receive a message asking whether to open Zoom in the browser or in the Zoom app, select the Zoom app. Select “Join by Computer Audio,” even if you are connecting via smartphone or tablet.
3. When you join the Zoom hearing, you will first see that you are in a Zoom “Waiting Room.” Please do not disconnect from the Waiting Room. The ALJ will receive a message that you are in the Waiting room, and the ALJ will bring you into the video hearing when it is your turn to testify.
4. The video hearing is an official court proceeding. Please approach the hearing with the same level of respect that you would approach an in-person proceeding in a courthouse, and accordingly wear appropriate clothing and use appropriate language.
5. Your video will be and should be on when you join the video hearing. If your audio is on “Mute,” as indicated by a microphone symbol with a slash mark at the bottom of your device screen, then no one will be able to hear you when you speak during the video conference. You may “Unmute” yourself by clicking on the microphone symbol one time, which will remove the slash mark on the microphone symbol and allow everyone to hear when you testify.

During the Hearing

1. Participants, witnesses and observers may NOT record, duplicate, or save or photograph any audio, video or image of any part of the proceeding, including conferences or breakout room discussions. The court reporter is the only person authorized to record the hearing.
2. Please do not talk over another person. Pause before speaking to avoid having more than one person speaking at the same time (e.g., due to a lag in the audio/video). Please wait for the attorney to finish the question before starting your answer. If you hear an attorney object (e.g. say the word “objection”), please stop speaking immediately and wait for instruction from the ALJ.
3. While testifying, you may not communicate with anyone else about your testimony (including during breaks), and you may not review any documents, devices, or other items unless the attorney or ALJ asks you to do so as part of a question they pose during your testimony. You may be asked to use your camera to show your surroundings prior to or while testifying.
4. During the trial, the attorneys may ask you to look at an exhibit. They may show you the document on your device screen or send you the document electronically. Please make sure you have provided an

email address that you can access during the hearing. You should answer any questions about the exhibit, and then put the exhibit aside once the attorney moves on to another line of questions.

5. At the end of your testimony, the ALJ will give you some final instructions and will likely instruct you not to tell any other possible witnesses about your testimony. The ALJ will then advise you when to disconnect from the Zoom video hearing.

6. One of the attorneys will contact you if you need to appear again to provide additional testimony.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE

and

Case 10-CA-223776

CONNIE RENEE SANCHEZ, an Individual

Prehearing Order: Access, Instructions, and Guidelines Regarding Zoom Hearing

The following order addresses how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on July 14, 2020 at 10:00 a.m. (EDT). It also includes additional instructions and guidelines regarding the conduct of the Zoom hearing.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you may join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit [Zoom.us](https://zoom.us) and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer by hovering over the Resources tab in the upper right of the screen and selecting “Download Zoom Client.” If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the “Join Zoom” link below. Alternatively, you can click on “Join a Meeting” in your Zoom app and enter the meeting code. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser.

When you enter, select “Join by Computer Audio” (even if you are connecting via a smart phone). You will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and networking.

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1603061700?pwd=Tm5lNFItR2ZZVEhZeEltcHhIUlNIUT09>

Meeting ID: 160 306 1700

Password: 382830

One tap mobile

+16692545252,,1603061700#,1#,382830# US (San Jose)
+16468287666,,1603061700#,1#,382830# US (New York)

Dial by your location

+1 669 254 5252 US (San Jose)
+1 646 828 7666 US (New York)
833 568 8864 US Toll-free

Meeting ID: 160 306 1700

Password: 382830

Find your local number: <https://www.zoomgov.com/join/1603061700>

Join by SIP

1603061700@sip.zoomgov.com

Join by H.323

161.199.138.10 (US West)
161.199.136.10 (US East)
Meeting ID: 160 306 1700
Password: 382830

Join by Skype for Business

<https://www.zoomgov.com/skype/1603061700>

If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or call Megan Mullett at 202-273-1096 for assistance. Ms. Mullett is an attorney on the staff of the Chairman and Members of the National Labor Relations Board. She will be acting as a “bailiff/co-host” to assist the trial judge with Zoom technical issues throughout the hearing. If you cannot reach Ms. Mullett, call the Judges Division at 202-501-8800 for assistance.

II. List of individuals who may join the meeting, including Non-participant Observers (public access)

No later than 10:00 am (EDT) on July 13, counsel must email the Judge, co-host/bailiff and court reporter a list of all hearing participants. In addition, counsel must email the Judge and co-host/bailiff a list of anticipated non-participants. These lists are for procedural use only and will not be part of the record. They must include the individual’s name, email address, telephone number and role in the proceeding. The lists are necessary for the Judge to allow appropriate access to the proceeding and correctly assign individuals to breakout rooms or the waiting room.

The parties will not be precluded from calling witnesses who are not on either list if necessary for the presentation of their case. However, counsel are reminded of the potential ramifications if it is subsequently determined that the sequestration order was violated. Accordingly, identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video

output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

III. Additional Instructions and Guidelines

No videotaping or recording

DO NOT VIDEOTAPE, BROADCAST, TELEWISE, AUDIO RECORD, OR PHOTOGRAPH, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER. Violation of this rule or causing disruptions may result in removal and other sanctions.

Providing all potential exhibits to the Judge, Reporter, Co-host/bailiff, your witnesses and opposing parties in advance of hearing

It would greatly facilitate the conduct of the hearing if the parties emailed all of their potential exhibits to the Judge, co-host/bailiff, court reporter, their own witnesses and opposing counsel no later than 10:00 am (EDT) on July 13. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the complaint may be witnesses. Therefore, the parties are requested to provide any exhibits they plan to use with such witnesses to opposing counsel in advance-with the exception of Jencks materials.

All exhibits should, if at all possible, be pre-marked, paginated and converted into one bookmarked PDF file per party.

All confidential personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the exhibits.

Calling witnesses and forwarding the electronic meeting invitation ("e-vite")

Counsel must forward the e-vite to their witnesses or provide the Judge with the witnesses' email addresses so that the Judge or bailiff can send an e-vite to them. When counsel forwards the e-vite, counsel should take care not to also forward the email address of the Judge or the bailiff.

Counsel must also ensure that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing.

Witnesses may not use a virtual background. The Judge and opposing counsel must be able to see who, if anyone, is in the room with them when they testify.

The Judge or bailiff/co-host will send a witness an e-vite to the Zoom hearing if counsel did not already forward an e-vite.

The Judge or bailiff/co-host will admit witnesses into the hearing from the waiting room.

Conferring via the Zoom breakout room function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room.

The Judge or his co-host will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

Jencks Statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email or the Zoom chatroom function, after a witness has testified on direct examination. After cross-examination opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

Showing documents to witnesses during examination

Counsel may use the “Share Screen” tool to share a document on the screen or use the Zoom group chat function to send a document as an attachment to a witness, other counsel, the Judge, and the reporter. However, computer email may be a better option in that each participant can follow along at his or her own pace.

If shared, counsel may scroll down the document page by page or go to a particular page; or counsel could give control over the document to another participant on request, who may scroll through it.

If sent as an attachment in group chat, everyone may download and view the document on their own. Ensure exhibits are properly marked, paginated, and bookmarked before the hearing or before being offered into the record as an exhibit.

The Judge may ask witnesses to move the camera to show their surroundings.

Offering exhibits into the record

Counsel may email or use the Zoom group chat function to send an exhibit to other counsel, the judge, and the reporter if they have not already done so; they can then download it to their computer as an admitted exhibit. However, email is the recommended method for sharing exhibits.

Counsel are encouraged to share this Order/Guidelines with the party it represents, witnesses and persons who request to observe the hearing through counsel or the party it represents.

Dated Washington, D.C. June 22, 2020



Michael A. Rosas
Administrative Law Judge

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

RK ADMINISTRATIVE SERVICES, LLC,
d/b/a RURAL KING

and

Case 10-CA-246142

(b) (6), (b) (7)(C)
an Individual

Prehearing Order: Access, Instructions, and Guidelines Regarding Zoom Hearing

The following order addresses how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on Wednesday, July 29, 2020 at 09:00 a.m. Eastern time. It also includes additional instructions and guidelines regarding the conduct of the Zoom hearing.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you may join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer or laptop by hovering over the Resources tab in the upper right of the screen and selecting "Download Zoom Client." If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the "Join Zoom" link below. Alternatively, you can click on "Join a Meeting" in your Zoom app and enter the meeting code. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser.

When you enter, select "Join by Computer Audio" (even if you are connecting via a smart phone). You will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and networking.

Judge Arthur Amchan is inviting you to a scheduled ZoomGov meeting.

Topic: RuralKingTrial

Time: This is a recurring meeting starting at 0900 on July 29, 2020

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1616940410?pwd=L2plaS90bkVXK3kvVzliRElBNnJaZz09>

Meeting ID: 161 694 0410

Password: 976380

Join by SIP

1616940410@sip.zoomgov.com

Join by H.323

161.199.138.10 (US West)

161.199.136.10 (US East)

Meeting ID: 161 694 0410

Password: 976380

Join by Skype for Business

<https://www.zoomgov.com/skype/1616940410>

If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or call Mark Eskenazi, at 202-273-1080 for assistance. Mr. Eskenazi is an attorney in the Office of the Executive Secretary at the National Labor Relations Board. Mr. Eskenazi has been screened from working on this case if it comes before the Board. He will be acting as a “bailiff/co-host” to assist the trial judge with Zoom technical issues throughout the hearing. If you cannot reach Mr. Eskenazi, call the Judges Division at 202-501-8800 for assistance.

II. List of individuals who may join the meeting, including Non-participant Observers (public access)

No later than 9:00 am ET on Tuesday, July 28, counsel must email the Judge, co-host/bailiff and court reporter a list of all hearing participants to which counsel has sent the access information. This list is for procedural use only and will not be part of the record. The list must include the individual’s name, email address, telephone number and role in the proceeding. This list is necessary for the ALJ to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room. However, parties will not be precluded from calling witnesses who are not on this list if necessary for the presentation of their case.

The parties must provide the identity and email addresses of any nonparticipant observers to the Regional Office no later than 9:00 a.m. ET on Tuesday, July 28. It is the responsibility of the Regional Office to advise nonparticipant observers the manner in which they will be able to access the hearing. Identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge’s instructions, they may be subject to removal and other sanctions.

III. Additional Instructions and Guidelines

No videotaping or recording

DO NOT VIDEOTAPE, BROADCAST, TELEWISE, AUDIO RECORD, OR PHOTOGRAPH, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER. Violation of this rule or causing disruptions may result in removal and other sanctions.

Providing all potential exhibits to the Judge, Reporter, Co-host/bailiff, your witnesses and opposing parties in advance of hearing

It would greatly facilitate the conduct of the hearing if the parties emailed all of their potential exhibits to the Judge, co-host/bailiff, court reporter, their own witnesses and opposing counsel no later than 9:00 am ET on Tuesday, July 28. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the complaint may be witnesses. Therefore, the parties are requested to provide any exhibits they plan to use with such witnesses to opposing counsel in advance-with the exception of Jencks materials.

All exhibits should, if at all possible, be pre-marked, paginated and converted into one bookmarked PDF file per party.

All confidential personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the exhibits.

Calling witnesses and forwarding the electronic meeting invitation ("e-vite")

Counsel must forward the e-vite to their witnesses or provide the ALJ with the witnesses' email addresses so that the ALJ or bailiff can send an e-vite to them. When counsel forwards the e-vite, counsel should take care not to also forward the email address of the ALJ or the bailiff.

Counsel must also ensure that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing.

Witnesses may not use a virtual background. Opposing counsel must be able to see who, if anyone, is in the room with them when they testify.

The ALJ or bailiff/co-host will send a witness an e-vite to the Zoom hearing if counsel did not already forward an e-vite.

The ALJ or bailiff/co-host will admit witnesses into the hearing from the waiting room.

Conferring via the Zoom breakout room function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room.

The Judge or his co-host will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

Jencks Statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email or the Zoom chatroom function, after a witness has testified on direct examination. After cross-examination opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

Showing documents to witnesses during examination

Counsel may use the “Share Screen” tool to share a document on the screen or use the Zoom group chat function to send a document as an attachment to a witness, other counsel, the ALJ, and the reporter. **However, computer email may be a better option in that each participant can follow along at his or her own pace.**

If shared, counsel may scroll down the document page by page or go to a particular page; or counsel could give control over the document to another participant on request, who may scroll through it.

If sent as an attachment in group chat, everyone may download and view the document on their own. Ensure exhibits are properly marked, paginated, and bookmarked before the hearing or before being offered into the record as an exhibit.

The Judge may ask, upon the request of a party, witnesses to move the camera to show their surroundings.

Offering exhibits into the record

Counsel may email or use the Zoom group chat function to send an exhibit to other counsel, the ALJ, and the reporter if they have not already done so; they can then download it to their computer as an admitted exhibit. **However, email is the recommended method for sharing exhibits.**

Counsel are encouraged to share this Order/Guideline with the party it represents, witnesses and persons who request to observe the hearing through counsel or the party it represents.

Dated: Washington, D.C.

June 25, 2020



Arthur J. Amchan
Deputy Chief Administrative Law Judge

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

RESOLUTE FOREST PRODUCTS US, INC.

and

Case 10-CA-256488

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC

Prehearing Order: Access, Instructions, and Guidelines Regarding Zoom Hearing

The following order addresses how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on Tuesday, July 21, 2020 at 11:00 a.m. Eastern time. It also includes additional instructions and guidelines regarding the conduct of the Zoom hearing.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you may join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer or laptop by hovering over the Resources tab in the upper right of the screen and selecting “Download Zoom Client.” If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the “Join Zoom” link below. Alternatively, you can click on “Join a Meeting” in your Zoom app and enter the meeting code. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser.

When you enter, select “Join by Computer Audio” (even if you are connecting via a smart phone).

You will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and networking.

Judge Keltner Locke is inviting you to a scheduled ZoomGov meeting.

Topic: Resolute Forest Products US, Inc. Trial

Time: This is a recurring meeting starting at 11:00 am ET on July 21, 2020

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1614440327?pwd=ZnFsSnpNeHBldFdMZVlwMGhKcTFEdz09>

Meeting ID: 161 444 0327

Password: 089642

One tap mobile

+16692545252,,1614440327#,,,0#,,089642# US (San Jose)

+16468287666,,1614440327#,,,0#,,089642# US (New York)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

833 568 8864 US Toll-free

Meeting ID: 161 444 0327

Password: 089642

Find your local number: <https://www.zoomgov.com/u/aby1hcQL6T>

Join by SIP

1614440327@sip.zoomgov.com

Join by H.323

161.199.138.10 (US West)

161.199.136.10 (US East)

Meeting ID: 161 444 0327

Password: 089642

Join by Skype for Business

<https://www.zoomgov.com/skype/1614440327>

If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or call Mark Eskenazi, at 202-273-1080 for assistance. Mr. Eskenazi is an attorney in the Office of the Executive Secretary at the National Labor Relations Board. Mr. Eskenazi has been screened from working on this case if it comes before the Board. He will be acting as a “bailiff/co-host” to assist the trial judge with Zoom technical issues

throughout the hearing. If you cannot reach Mr. Eskenazi, call the Judges Division at 202-501-8800 for assistance.

II. List of individuals who may join the meeting, including Non-participant Observers (public access)

No later than 11:00 am ET on Monday, July 20, 2020, counsel must email the Judge, co-host/bailiff and court reporter a list of all hearing participants to which counsel has sent the access information. This list is for procedural use only and will not be part of the record. The list must include the individual's name, email address, telephone number and role in the proceeding. This list is necessary for the administrative law judge to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room. However, parties will not be precluded from calling witnesses who are not on this list if necessary for the presentation of their case.

The parties must provide the identity and email addresses of any nonparticipant observers to the Regional Office no later than 11:00 am ET on Monday, July 20, 2020. It is the responsibility of the Regional Office to advise nonparticipant observers the manner in which they will be able to access the hearing. Identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

III. Additional Instructions and Guidelines

Restrictions on Recording

Consistent with the policy governing the audio and/or video recording of civil proceedings in the United States district courts, as established by the Judicial Council of the United States, and except for the specific circumstances described below, the recording of the hearing in this matter is not permitted. However, for the perpetuation of the record of the proceedings, the official court reporter may use such audio and/or video equipment as needed for the preparation of a timely and accurate official transcript. Additionally, except as otherwise directed by the judge, counsel for each of the parties may make a temporary recording for interim use in the preparation of motions and closing argument. The transcript prepared by the court reporter shall be the only official record of the proceedings.

Providing all potential exhibits to the Judge, Reporter, Co-host/bailiff, your witnesses and opposing parties in advance of hearing

It would greatly facilitate the conduct of the hearing if the parties emailed all of their potential exhibits to the Judge, co-host/bailiff, court reporter, their own witnesses and opposing counsel no later than 11:00 am ET on Monday, July 20, 2020. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the complaint may be witnesses. Therefore, the parties

are requested to provide any exhibits they plan to use with such witnesses to opposing counsel in advance-with the exception of Jencks materials.

All exhibits should, if at all possible, be pre-marked, paginated and converted into one bookmarked PDF file per party.

All confidential personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the exhibits.

Calling witnesses and forwarding the electronic meeting invitation (“e-vite”)

Counsel must forward the e-vite to their witnesses or provide the administrative law judge with the witnesses’ email addresses so that the administrative law judge or bailiff can send an e-vite to them. When counsel forwards the e-vite, counsel should take care not to also forward the email address of the administrative law judge or the bailiff.

Counsel must also ensure that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing.

Witnesses may not use a virtual background. Opposing counsel must be able to see who, if anyone, is in the room with them when they testify.

The administrative law judge or bailiff/co-host will send a witness an e-vite to the Zoom hearing if counsel did not already forward an e-vite.

The administrative law judge or bailiff/co-host will admit witnesses into the hearing from the waiting room.

Conferring via the Zoom breakout room function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room.

The Judge or his co-host will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

Jencks Statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email or the Zoom chatroom function, after a witness has testified on direct examination. After cross-examination opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

Showing documents to witnesses during examination

Counsel may use the “Share Screen” tool to share a document on the screen or use the Zoom group chat function to send a document as an attachment to a witness, other counsel, the

administrative law judge, and the reporter. **However, computer email may be a better option in that each participant can follow along at his or her own pace.**

If shared, counsel may scroll down the document page by page or go to a particular page; or counsel could give control over the document to another participant on request, who may scroll through it.

If sent as an attachment via email or Zoom group chat, everyone may download and view the document on their own. Ensure exhibits are properly marked, paginated, and bookmarked before the hearing or before being offered into the record as an exhibit.

The Judge may ask, upon the request of a party, witnesses to move the camera to show their surroundings.

Offering exhibits into the record

Counsel may email or use the Zoom group chat function to send an exhibit to other counsel, the administrative law judge, and the reporter if they have not already done so; they can then download it to their computer as an admitted exhibit. **However, email is the recommended method for sharing exhibits.**

Counsel are encouraged to share this Order/Guideline with the party it represents, witnesses and persons who request to observe the hearing through counsel or the party it represents.

Dated: Washington, D.C., July 16, 2020.



Keltner W. Locke
Administrative Law Judge

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LV CHC HOLDINGS I, LLC d/b/a CONSULATE
HEALTH CARE; 1026 ALBEE FARM ROAD
OPERATIONS LLC d/b/a BAY BREEZE HEALTH
AND REHABILITATION CENTER; 216 SANTA
BARBARA BOULEYARD OPERATIONS LLC d/b/a
CORAL TRACE HEALTH CARE; MIAMI FACILITY
OPERATIONS LLC d/b/a FRANCO NURSING &
REHABILITATION CENTER; 3001 PALM COAST
PARKWAY OPERATIONS LLC d/b/a GRAND OAKS
HEALTH AND REHABILITATION CENTER; 2826
CLEVELAND AVENUE OPERATIONS LLC d/b/a
HERITAGE PARK REHABILITATION AND
HEALTHCARE; 4200 WASHINGTON STREET
OPERATIONS LLC d/b/a HILLCREST HEALTH
CARE AND REHABILITATION CENTER;
KISSIMMEE FACILITY OPERATIONS LLC d/b/a
CONSULATE HEALTH CARE OF KISSIMMEE; 710
NORTH SUN DRIVE OPERATIONS
LLC d/b/a LAKE MARY HEALTH AND
REHABILITATION CENTER; NORTH FORT MYERS
FACILITY OPERATIONS LLC d/b/a CONSULATE
HEALTH CARE OF NORTH FORT MYERS; 650
REED CANAL ROAD OPERATIONS LLC d/b/a
OAKTREE HEALTHCARE; 5405 BABCOCK STREET
OPERATIONS LLC d/b/a THE PALMS
REHABILITATION AND HEALTHCARE CENTER;
9311 SOUTH ORANGE BLOSSOM TRAIL
OPERATIONS LLC d/b/a PARKS HEALTHCARE AND
REHABILITATION CENTER; 4641 OLD CANOE
CREEK ROAD OPERATIONS LLC d/b/a
PLANTATION BAY REHABILITATION CENTER; 5065
WALLIS ROAD OPERATIONS LLC d/b/a
RENAISSANCE HEALTH AND REHABILITATION;
7950 LAKE UNDERHILL ROAD OPERATIONS LLC
d/b/a RIO PINAR HEALTH CARE; 3920 ROSEWOOD
WAY OPERATIONS LLC d/b/a ROSEWOOD HEALTH
AND REHABILITATION CENTER; 2170 CORTEZ
BOULEVARD OPERATIONS LLC d/b/a SPRING HILL
HEALTH AND REHABILITATION CENTER; 1550

JESS PARRISH COURT OPERATIONS LLC d/b/a
VISTA MANOR; WEST ALTAMONTE FACILITY
OPERATIONS LLC d/b/a CONSULATE HEALTH
CARE AT WEST ALTAMONTE; WEST PALM BEACH
FACILITY OPERATIONS LLC d/b/a CONSULATE
HEALTH CARE OF WEST PALM BEACH

and

Case 12-CA-249715

1199 SEIU, UNITED HEALTH CARE WORKERS EAST,
FLORIDA REGION

LV CHC HOLDINGS I, LLC d/b/a CONSULATE
HEALTH CARE; 6305 CORTEZ ROAD WEST
OPERATIONS LLC d/b/a BRADENTON HEALTH
CARE; 2939 SOUTH HAVERHILL ROAD OPERATIONS
LLC d/b/a CORAL BAY HEALTHCARE AND
REHABILITATION; 1851 ELKCAM BOULEY ARD
OPERATIONS LLC d/b/a DELTONA HEALTH CARE; 1820
SHORE DRIVE OPERATIONS LLC d/b/a THE HEALTH
AND REHABILITATION CENTRE AT DOLPHIN'S VIEW;
3735 EVANS AVENUE OPERATIONS LLC d/b/a
EVANS HEALTH CARE; 611 SOUTH 13TH STREET
OPERATIONS LLC D/B/AFORT PIERCE HEALTH
CARE; 2916 HABANA WAY OPERATIONS LLC
d/b/a HABANA HEALTH CARE CENTER; 11565
HARTS ROAD OPERATIONS LLC d/b/a HARTS
HARBOR HEALTH CARE CENTER; 125 ALMA
BOULEVARD OPERATIONS LLC d/b/a ISLAND
HEALTH AND REHABILITATION CENTER; 1120
WEST DONEGAN AVENUE OPERATIONS LLC
d/b/a KEYSTONE REHABILITATION AND HEALTH
CENTER/KEYSTONE VILLAS ASSISTED LIVING
CENTER; 207 MARSHALL . DRIVE OPERATIONS
LLC d/b/a MARSHALL HEALTH AND
REHABILITATION CENTER; 3110 OAKBRIDGE
BOULEVARD OPERATIONS LLC d/b/a
OAKBRIDGE HEALTHCARE CENTER; 1010
CARPENTERS WAY OPERATIONS LLC d/b/a
WEDGEWOOD HEALTHCARE CENTER; WINTER
HAVEN FACILITY OPERATIONS, LLC d/b/a
CONSULATE HEALTH CARE OF WINTER HAVEN;
6414 13th ROAD SOUTH OPERATIONS LLC d/b/a

WOOD LAKE HEALTH AND REHABILITATION
CENTER

and Case

12-CA-250209

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 1625

ORDER REQUIRING HEARING TO BE
CONDUCTED BY VIDEOCONFERENCE

The hearing in this matter is scheduled to take place starting at 9:30 am ET on August 25, 2020, and continuing on consecutive days thereafter. In accordance with Section 102.35(c) of the Board's Rules and Regulations and the Board's recent guidance regarding the conduct of hearings in *Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020), due to the "compelling circumstances" created by the current Coronavirus Disease (COVID-19) pandemic, the hearing in this case will be conducted remotely via videoconference using Zoom technology and under appropriate safeguards.

Access, Instructions, and Guidelines Regarding Zoom Hearing

The following instructions and guidelines address how identified participants and non-participant observers may access and conduct themselves during the Zoom unfair labor practice hearing.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you may join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. Download and install the free Zoom client on your computer or laptop by hovering over the Resources tab in the upper right of the screen and selecting "Download Zoom Client." If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting five minutes before the hearing is scheduled to commence. You can click on "Join a Meeting" in your Zoom app and enter the meeting code, or join by clicking on the link in the e-vite to the hearing. If you are asked whether to open with

the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully.

When you enter, select “Join by Computer Audio” (even if you are connecting via a smart phone). You will be automatically placed in an online waiting room until admitted to the hearing. Please be patient, it may be some time before you are admitted to the hearing. Avoid running unnecessary applications besides Zoom to conserve processing power and networking.

Cristina von Spiegelfeld will be serving as bailiff at the hearing to provide technological support. Ms. Spiegelfeld is an attorney who is assigned to staff of a Board Member of the National Labor Relations Board. She has been screened from working on this case if it comes before the Board. If you have trouble joining the hearing, please contact the Ms. Spiegelfeld (Cristina.VonSpiegelfeld@nrlb.gov) and if you cannot reach her call the Judges Division at 202-501-8800 for assistance.

II. List of individuals who may join the meeting, including
non-participant observers (public access)

No later than 11:00 a.m. (ET) on August 21, 2020, counsel must email the Judge, bailiff and court reporter a list of all hearing participants. In addition, counsel must email the Judge and bailiff a list of anticipated non-participants. These lists are for procedural use only and will not be part of the record. They must include the individual's name (please make sure to provide the name that will appear in Zoom for the individual), email address, telephone number and role in the proceeding. The parties will not be precluded from calling witnesses necessary to the presentation of their case simply because that witness was not previously identified on the list.

Identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above-described ways. However, they must remain muted with their video output off throughout the hearing. If they violate the Judge's instructions, or disrupt the hearing in any way, they may be subject to removal and other sanctions.

No videotaping or recording

DO NOT VIDEOTAPE, BROADCAST, TELEVISION, AUDIO RECORD, OR PHOTOGRAPH THE HEARING. THIS PROHIBITION EXTENDS TO TAKING SCREENSHOTS AND OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER. VIOLATION OF THIS RULE OR CAUSING DISRUPTIONS MAY RESULT IN REMOVAL AND OTHER SANCTIONS.

Providing all potential exhibits to the Judge, reporter, bailiff,
your witnesses and opposing counsel in advance of hearing

It will greatly facilitate the conduct of the hearing if the parties email all of their expected exhibits to the Judge, bailiff, court reporter, their own witnesses, and opposing counsel no later than 11:00 a.m. ET on August 21, 2020. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the Complaint, may be witnesses. Therefore, the parties are requested to provide any exhibits they plan to use with such witnesses (with the exception of Jencks materials) to opposing counsel in advance.

All exhibits should, if at all possible, be pre-marked, and paginated. The only formats that will be accepted are PDF for documents, JPG and PNG for images, MP3 for audio recordings, and MP4 for video recordings. No Word or DOC formats or executable files will be accepted. If a part expects to introduce an audio or video exhibit, or another type of very large exhibit, inform the Judge, bailiff, and opposing counsel no later than 3 business days before the hearing. Such files may not be transmittable over email. Instead, the bailiff will set up a webpage in which the party can upload the files for access by the Judge and other parties.

Given that you are being asked to pre-mark exhibits, the Judge will receive them out-of-order if necessary. Rebuttal exhibits, or other exhibits not anticipated and submitted prior to the hearing, may be submitted during the hearing through the Chat/File feature in Zoom or via e-mail to the other parties, Judge, bailiff, and court reporter.

All confidential personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the exhibits. In the event that you plan to have a witness make notations on an exhibit, and plan to ask that the exhibit be received into evidence with those notations, please prepare an exhibit with the notations in advance of the hearing and then have the witness testify about them. Notations made on a document during the virtual hearing may be difficult to make part of the record.

Calling witnesses and forwarding the electronic meeting invitation ("e-vite")

Counsel must forward the e-vite to their witnesses or provide the Judge with the witnesses' email addresses so that the Judge or bailiff can send an e-vite to them. When counsel forwards the e-vite, counsel should take care not to also forward the email address of the Judge or the bailiff.

Counsel must ensure that their witnesses have the equipment and internet access necessary to join and testify at the Zoom hearing.

The Judge or bailiff will admit witnesses into the hearing from the waiting room.

During the hearing, witnesses and other participants comport themselves in a manner, and wear attire, that would be appropriate if they were physically present in a court room or hearing room. They should participate from an area where there will not be extraneous noise and that limits the possibility of interruption.

Witnesses may not use a virtual background. Opposing counsel must be able to see who, if anyone, is in the room with a witness while he or she testifies. At any time immediately preceding or during a witness' testimony, counsel may request that the Judge direct the witness to use the webcam on their device to pan the room/area where they are testifying. The administrative law judge may also sua sponte direct the witness to do this.

While witnesses are testifying, they are strictly prohibited from communicating with anyone else by any means. While testifying they are also prohibited from looking at any documents or other items unless directed by counsel and authorized by the Judge. This prohibition includes viewing web searches and written documentation. While testifying, the witness' hands must be empty and the witness is prohibited from typing.

If the Rule regarding sequestration of witnesses is invoked, counsel should inform their expected witnesses not to observe the hearing prior to testifying, and should inform all participants associated with them not to communicate anything about a prior witnesses' testimony to other prospective witnesses. These limitations are subject to exceptions that I will explain at the hearing if the sequestration rule is invoked.

Conferring via the Zoom breakout room or chat function

Participants may request to speak privately during the hearing. If your request is granted by the Judge, the participants will be moved into a virtual breakout room to confer. No one, aside from the individuals moved to the breakout room, will be able to hear the conversation in the breakout room, and the parties in the breakout room will not be able to hear what is happening in the virtual hearing room. The Judge may call participants back into the main hearing, at which time a message on your screen will inform you that in 60 seconds you will be returned to the hearing room. You may also click on "return to main session" to exit the breakout room at any time. Do not click "leave meeting" when exiting the breakout room because that will mean you have to sign back into the meeting, go to the waiting room, and wait to be readmitted to the hearing. If you are using a web browser for this hearing rather than the Zoom app, you will not have access to the breakout room feature.

During the hearing, clients and their attorneys may pass "notes" using the private chat feature. To do so, click on the "chat" button at the bottom of the Zoom screen, and at the bottom of the chat window, pull-down the recipient arrow and select your lawyer's or client's name. Be careful; if you select "everyone" as the chat recipient the message will be visible to all meeting participants, including the Judge. Do not send private messages to the Judge, another party, or any non-client witness.

Jencks Statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email or the Zoom chatroom function after a witness has testified on direct examination. After cross-examination, opposing counsel MUST delete all Jencks statements from their computer, including from any trash file on the computer, and represent to the Judge and the General Counsel that it has done so.

Showing documents to witnesses during examination

Counsel may use the “Share Screen” tool to share a document on the screen or use the Zoom group chat function to send a document as an attachment to a witness, other counsel, the Judge, the bailiff, and the reporter.

If the “Share Screen” tool is used, counsel may scroll down the document page by page or go to a particular page; or counsel may give control over the document to another participant on request, who may scroll through it.

If sent as an attachment in group chat, everyone may download and view the document on their own. Ensure that exhibits are properly marked, paginated, and bookmarked before the hearing or before being offered into the record as an exhibit. The only formats that will be accepted are PDF for documents, JPG and PNG for images, MP3 for audio recordings, and MP4 for video recordings. No Word or DOC formats or executable files will be accepted.

Offering exhibits into the record

Counsel may email or use the Zoom group chat function to send an exhibit to other counsel, the Judge, and the reporter if they have not already done so. However, email is the recommended method for sharing exhibits.

If a party expects to introduce an audio or video exhibit, or another type of very large exhibit, inform the Judge, bailiff, and opposing counsel no later than August 19, 2020. Such files may not be transmittable over email. Instead, the bailiff will set up a webpage in which the party can upload the files for access by the Judge and other parties.

Counsel are instructed to share this Order/Guidelines with the party they represent, witnesses, and persons who request to observe the hearing through counsel or the party counsel represents.

Dated Washington, D.C.
August 3, 2020

A handwritten signature in black ink, appearing to read "Paul Bogas", with a long horizontal flourish extending to the right.

Paul Bogas
Administrative Law Judge

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

STERICYCLE OF PUERTO RICO, INC.

Respondent

Case 12-CA-251358

and

CENTRAL GENERAL DE TRABAJADORES

Charging Party

**REQUIREMENTS AND INSTRUCTIONS FOR VIRTUAL (ZOOM) HEARING
ON OCTOBER 14, 2020**

As ordered, the hearing in this case will be conducted virtually using Zoom technology. In preparation for the hearing, and as advised in our September 10, 2020 pre-hearing conference, we will have **a Zoom pre-hearing conference on October 1, 2020 and a Zoom practice session during the week prior to the hearing (date TBD)**. The practice session will allow the parties to familiarize themselves with the technology and its features and the processes for exchanging exhibits and admitting them into the record. I am attaching, as promised the requirements and instructions for the Zoom hearing.

Separate Zoom E-vites for the hearing and practice session will be provided to the Counsels and may be shared with co-counsel. The Counsel for the General Counsel should share the invitation with the court reporting company and the court reporter, as well as with the Charging Party for both days. It has proven helpful to have the assigned court reporting join the practice session. Take special note of the instructions below pertaining to acquiring a Zoom account, access and joining a meeting.

Dated at Washington, D.C. September 14, 2020.



Donna N. Dawson
Administrative Law Judge

Access Instructions and Guidelines for Zoom Hearings

The following instructions address how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on October 14, 2020. It also includes additional required instructions and guidelines regarding the conduct of the Zoom hearing. Please follow these instructions for any Zoom pre-hearing conferences and/or practice sessions as well.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you must join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended, as well as a reliable high-speed internet connection. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer or laptop by hovering over the Resources tab in the upper right of the screen and selecting "Download Zoom Client." If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the "Join Zoom" link once you have accessed your Zoom feature. Alternatively, you can click on "Join a Meeting" in your Zoom app and enter the meeting code and password. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser. Please make sure that your audio and video are working properly. If there are issues with your audio, try one or more of the following back-ups: 1) check the sound settings in Windows (usually at the bottom right of the computer near the clock) and the Zoom settings (at the bottom left click the up arrow next to the mute button); 2) reboot your computer and rejoin the hearing; and/or 3) use your computer for the Zoom video (with Zoom audio on mute) and use your phone to call in for audio.

When you enter, select "Join by Computer Audio" (even if you are connecting via a smart phone), you will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and ensure an adequate networking connection.

If you are unable for some reason to join the meeting online using the Zoom app or web browser and need assistance, you may join the meeting by calling the appropriate phone number at the bottom of the Zoom e-vite and entering the meeting ID and password when prompted.

If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or bailiff/co-host (number will be provided) for assistance. If you cannot reach these individuals, call the Judges Division at 202-501-8800 for assistance.

Each hearing participant must hide non-video, non-hearing participants, such as public spectators, paralegals and interns, so they do not take up screen space.

II. List of Individuals Who May Join the Meeting, Including Non-participant Observers (public access).

Counsel must ensure their witnesses have access to the equipment, internet access, and training necessary to fully participate in the Zoom video hearing.

The Judge will provide counsel with a link and information and password to access the Zoom video hearing. Counsel will provide that information only to co-counsel, party representatives, paralegals and their witnesses in advance of the hearing. Others may join the call as spectators by contacting the Regional Office and supplying their name, email address, and telephone number.

The ALJ may disseminate a separate pdf document containing access information for the parties to forward to witnesses. **Do not** directly forward this email to other individuals, because it may contain the ALJ's and others' contact information. Save the pdf and attach it to a new email before sending it. This method should preserve the hyperlinks allowing easier access. In the alternative, you may copy and paste your invitation (without the ALJ's and others' contact information) to a separate email.

No later than 12:00 noon (EST) on the Friday before the hearing, counsel **must** email the Judge, bailiff/co-host and court reporter a list of all hearing participants to which counsel has sent the access information. This list is for procedural use only and will not be part of the record. The list must include each participant's real name, email address, telephone number and role in the proceeding. This list is necessary for the Judge to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room. However, parties will not be precluded from calling witnesses who are not on this list, if necessary, for the presentation of their case and once their information is provided to the Judge and/or bailiff.

The parties **must** provide the identity and email addresses of any nonparticipant observers to the Regional Office and the bailiff/co-host no later than 12:00 noon (EST) on the Friday before the hearing. It is the responsibility of the Regional Office to instruct nonparticipant observers on how to access the hearing. The ALJ will provide the bailiff/co-host with the same information regarding any nonparticipant observers invited by the ALJ. Identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

III. Addition Instructions and Guidelines

No Videotaping or Recording

DO NOT VIDEOTAPE, BROADCAST, TELEWISE, AUDIO RECORD, OR PHOTOGRAPH, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER.

Violation of this rule or causing disruptions may result in removal and other sanctions.

Subpoenaed Documents and Exhibits

The parties **must** email all potential subpoenaed documents and exhibits to the bailiff/co-host and the court reporter and to appropriate witnesses, if necessary, no later than 12:00 noon (EST) on the Friday before the hearing. This will ensure the efficient handling of documents during the hearing. The only exception may be the Jencks materials with approval by the Judge. All confidential, personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the documents/exhibits.

All exhibits **must** be pre-marked, paginated and converted into one bookmarked, clickable PDF formatted file per party. If there is difficulty paginating and/or converting to bookmarked PDF files, please notify the ALJ and/or the bailiff assigned for assistance.

Parties should serve subpoenas as far in advance of the hearing as is practical with a goal of no later than *3 weeks prior to the hearing date*. If there are issues about the subpoenas, the parties should meet and confer to attempt to resolve those issues. Parties should notify the Judge as soon as possible of subpoena issues they are unable to resolve.

The parties should discuss and agree, to the extent possible, on joint exhibits and factual stipulations to expedite matters. If there are exhibits for which one party refuses to include in the joint exhibits but has no viable objections to its relevancy or authenticity, please consider not objecting to submission of those documents into the record at the outset of the hearing.

Confidential documents, such as medical records and Jencks statements, will be shared at the appropriate time during hearing and in an appropriate format to ensure that they are shared with only those who need to see them. Jencks statements (such as affidavits given to the General Counsel) will be provided to opposing counsel via email, upon request, immediately after a witness has testified on direct examination. After cross-examination opposing counsel **must** delete all Jencks statements from their computer (i.e., from all mailboxes, files/folders and trash bins) and represent to the court and the General Counsel that it has done so. Opposing counsel must not, under any circumstances, copy, photograph or otherwise reproduce copies of these statements. All paper copies **must** be shredded or returned by mail.

If there are large document files or video and/or audio files, they must be uploaded into the ALJ's protected Sharepoint file for this case on or before noon (EST) on the Friday prior to the

hearing. The ALJ may also require or permit other exhibits to be uploaded in this manner. Counsel will be provided with the necessary link and instructions on how to upload files. Uploading and sharing of any documents or recordings will be further discussed during the pre-hearing conferences.

Calling Witnesses and Forwarding the Electronic Meeting Invitation ("e-vite")

Counsel are responsible for ensuring that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing. Participants, including counsel and witnesses, **may not** use a virtual background. The Judge and opposing counsel must be able to see who, if anyone, is in the room with witnesses when they testify. Witnesses **must** keep their hands in view of their cameras throughout the duration of the hearing, unless they are using a device that does not permit them to do so. If the latter is the case, counsel must inform the ALJ.

The Judge or bailiff/co-host will send a witness an e-vite to the Zoom hearing if counsel did not already forward an e-vite. The ALJ or bailiff/co-host will admit witnesses into the hearing from the waiting room where they must wait until called to testify.

Setting-Up Equipment and Area

- Set up your computer, laptop, or tablet in a well-lit, quiet room with a non-distracting background and with the strongest light source in front of you.
- Station camera at or slightly above eye level (the witness's face and what is in front of them should be visible) and speak directly at the camera, not at the screen. The Judge may ask the witness to move the camera to show their surroundings.
- Headsets or earphones with built-in microphones may help reduce background noise.
- Avoid running unnecessary applications besides Zoom to conserve processing power and networking.
- Mute sounds from all other applications (e.g., email notifications, chat messaging, etc.) and other devices.
- Witnesses must, and will be reminded, to mute the sound on their devices when they are not testifying.
- Plug computer, laptop, tablet or phone into a good power source while at the hearing.
- If possible, avoid sharing your internet/wi-fi service with others during the hearing.
- Dress the same way you would dress for in-person appearance.

Conferring via the Zoom Breakout Room Function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room. The Judge or the bailiff will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

Showing Documents to Witnesses During Examination

Counsel may share documents with witnesses during examination in the same manner which is discussed above. If shared, counsel may scroll down the document page by page or go to a specific page. Counsel may also give control of the document to another participant on request, such as the bailiff/co-host, who may scroll through it. If sent as an attachment in an email or group chat, everyone may download and view the document on their own.

Offering Exhibits into the Record

Counsel will be instructed more specifically before or during the practice Zoom session on how to offer and submit exhibits into the record and provide them to the court reporter if they have not already done so.

Counsel are encouraged to share appropriate parts of this Order/Guidelines with the parties they represent, witnesses and, if necessary, persons who request to observe the hearing through counsel or the party it represents.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, DC**

CHICAGO JEWISH FUNERALS,

and

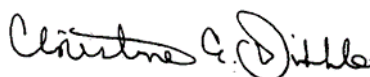
Case No. 13-CA-246462

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 769**

**ORDER SETTING HEARING TO BE CONDUCTED BY VIDEO (ZOOM
TECHNOLOGY)**

Attached are the written guidelines and instructions for conducting the Zoom hearing on **September 30, 2020 at 9:00 a.m. (EST).**¹ Separate Zoom E-vites will be provided to the Charging Party and Counsels at least seven (7) calendar days prior to the hearing. The Counsel for the General Counsel should share the invitation with the court reporting company and the court reporter. The Charging Party will also receive an invitation. The parties may share the PDF copy of the Zoom invitation with other participants and observers; **please do not share the Outlook version of the invitation, as that version will list my email address.** Take special note of the instructions below pertaining to acquiring a Zoom account, access and joining a meeting.

Dated: September 15, 2020



Christine E. Dibble
Administrative Law Judge

¹After careful consideration of the relevant factors in this matter, I find that this case should be conducted remotely by videoconference using Zoom technology, pursuant to Section 102.35 (c) of the Board's Rules and Regulations, due to the "compelling circumstances" created by the current Coronavirus Disease (COVID-19) pandemic. See *Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020); *XPO Cartage, Inc.*, 370 NLRB No. 10 (August 20, 2020).

Access Instructions and Guidelines for Zoom Hearings

The following instructions address how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on **September 30, 2020 at 9:00 a.m. (EST)**. It also includes additional required instructions and guidelines regarding the conduct of the Zoom hearing. Please also follow these instructions for any Zoom pre-hearing conferences.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you must join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. A computer or laptop with audio/video capability is highly recommended, as well as a reliable high-speed internet connection. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the "Join Zoom" link contained in the Zoom E-vite. Alternatively, you can click on "Join a Meeting" in your Zoom app and enter the meeting code and password. If you are asked whether to open with the Zoom app or in the web browser, ***always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser.*** Please make sure that your audio and video are working properly. If there are issues with your audio, try one or more of the following back-ups: 1) check the sound settings in Windows (usually at the bottom right of the computer near the clock) and the Zoom settings (at the bottom left click the up arrow next to the mute button); 2) reboot your computer and rejoin the hearing; and 3) use your computer for the Zoom video (with Zoom audio on mute) and use your phone to call in for audio.

When you enter, select "Join by Computer Audio" (even if you are connecting via a smart phone), you will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and ensure adequate networking connection.

If you are unable to join the meeting online using the Zoom app or web browser and need assistance, you may join the meeting by calling the appropriate phone number contained in the E-vite and entering the meeting ID and password when prompted. If you are still unable to join the meeting either online or by phone, contact one of the other participants in the hearing or co-host/bailiff (a number will be provided at a date closer to the hearing) for assistance. If you cannot reach these individuals, call the Judges Division at 202-501-8800 for assistance.

Each hearing participant must hide non-video, non-hearing participants, such as public spectators, paralegals and interns, so they do not take up screen space.

II. List of Individuals Who May Join the Meeting, Including Non-participant Observers (public access).

Counsel must ensure their witnesses have access to the equipment, internet access, and training necessary to fully participate in the Zoom video hearing.

The Judge will provide counsel with a link and information and password to access the Zoom video hearing. Counsel will provide that information **only** to co-counsel, party representatives, paralegals and their witnesses in advance of the hearing. Others may join the call as spectators by contacting the Regional Office and supplying their name, email address, and telephone number.

The ALJ may disseminate a separate pdf document containing access information for the parties to forward to witnesses. **Do not** directly forward that email to other individuals, because it contains the ALJ's and others' contact information. Save the pdf and attach it to a new email before sending it. This method should preserve the hyperlinks allowing easier access. In the alternative, you may copy and paste your invitation (without the ALJ's and others' contact information) to a separate email.

No later than 12:00 noon (EST) on the Friday before the hearing, counsel must email the Judge, co-host/bailiff and court reporter a list of all hearing participants to which counsel has sent the access information. This list is for procedural use only and will not be part of the record. The list must include each participant's real name, email address, telephone number and role in the proceeding. This list is necessary for the Judge to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room. However, parties will not be precluded from calling witnesses who are not on this list, if necessary, for the presentation of their case and once their information is provided to the Judge and/or bailiff.

The parties must provide the identity and email addresses of any nonparticipant observers to the Regional Office no later than 12:00 noon (EST) on the Friday before the hearing. It is the responsibility of the Regional Office to advise nonparticipant observers how to access the hearing. Identified nonparticipant observers may join the hearing with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

III. Addition Instructions and Guidelines

No Videotaping or Recording

DO NOT VIDEOTAPE, BROADCAST, TELEWISE, AUDIO RECORD, OR PHOTOGRAPH THE HEARING, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER.

Violation of this rule or causing disruptions may result in removal and other sanctions.

Subpoenaed Documents and Exhibits

It would greatly facilitate the conduct of the hearing if the parties emailed all of their potential exhibits to the Judge, co-host/bailiff, court reporter, their own witnesses and opposing counsel no later than 12:00 noon (EST) on the Friday before the hearing. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the complaint may be witnesses. Therefore, the parties are requested to provide any exhibits they plan to use with such witnesses, or otherwise submit, in advance. Jencks materials are not covered by this request, as those materials need not be provided until requested for cross examination.

As an alternative to email, the parties may request that the agency create secure NLRB **SharePoint** webpages for this case. Exhibits uploaded to **Sharepoint** can be viewed by those with authorized access (such as an individual party, which may then provide access, as needed, to the Judge, co-host/baliff, court reporter, and/or other parties). **Sharepoint** may be required if a party intends to introduce an audio or video exhibit, or a large exhibit that cannot be transmitted by email. The agency requires at least three business days advance notice to set up a **Sharepoint** webpage.

If there are large document files or video and/or audio files, they must be uploaded into the ALJ's protected **Sharepoint** file for this case on or before noon (EST) on the Friday prior to the hearing. The ALJ may also require or permit other exhibits to be uploaded in this manner. Counsel will be provided with the necessary link and instructions on how to upload files.

All exhibits should be pre-marked, paginated and converted into one bookmarked, clickable PDF file per party. Note that all exhibits should be in PDF format. If there is difficulty paginating and/or converting to bookmarked PDF files, please notify the ALJ and/or the bailiff assigned for assistance. Confidential, personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the exhibits.

To the extent possible, the parties should discuss and agree on joint exhibits and factual stipulations to expedite matters. If there are exhibits for which one party refuses to include in the joint exhibits but has no viable objections to its relevancy or authenticity, please consider not objecting to the moving party submitting those documents into the record at the outset of the hearing at the same time the joint exhibits are received. To the extent possible prior to the

hearing, all joint exhibits should be compiled into one pdf file and each party's separate exhibits should each be compiled into one pdf file and labeled and bookmarked as discussed above.

Jencks statements, such as affidavits given to the General Counsel, will be provided (by email or another method) to opposing counsel upon request for cross examination. After cross-examination, opposing counsel **MUST** delete all Jencks statements from their computer (i.e., from all mailboxes, files/folders and trash bins) and represent to the court and the General Counsel that it has done so. All paper copies **MUST** be shredded or will be returned by mail.

Parties should serve subpoenas as far in advance of the hearing as is practical with a goal of no later than *2 weeks prior to the hearing date*. If there are issues with the subpoenas, the parties should meet and confer to attempt to resolve those issues. Parties should notify the Judge as soon as possible of subpoena issues they are unable to resolve. The parties should discuss and produce subpoenaed documents no later than noon (EST) the Friday before the hearing.

Calling Witnesses and Forwarding the Electronic Meeting Invitation ("e-vite")

Counsel are responsible for ensuring that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing. Participants, including counsel and witnesses, **may not** use a virtual background. The Judge and opposing counsel must be able to see who, if anyone, is in the room with witnesses when they testify. Witnesses must always keep their hands in view of the camera, unless they are using a device that does not permit them to do so.

The Judge or bailiff/co-host will send a witness an e-vite to the Zoom hearing if counsel did not already forward an e-vite. The ALJ or bailiff/co-host will admit witnesses into the hearing from the waiting room where they must wait until called to testify.

Setting-Up Equipment and Area

- Set up your computer, laptop, or tablet in a well-lit, quiet room with a non-distracting background and with the strongest light source in front of you.
- Station camera at or slightly above eye level (the witness's face and what is in front of them should be visible) and speak directly at the camera, not at the screen. The Judge may ask the witness to move the camera to show their surroundings.
- Headsets or earphones with built-in microphones may help reduce background noise.
- Avoid running unnecessary applications besides Zoom to conserve processing power and networking.
- Mute sounds from all other applications (e.g., email notifications, chat messaging, etc.).
- Witnesses must, and will be reminded, to mute the sound on their devices when they are not testifying.
- Plug computer, laptop, tablet or phone into a good power source while at the hearing.
- If possible, avoid sharing your internet/Wi-Fi service with others during the hearing.
- Dress the same as you would dress for an in-person appearance.

Conferring via the Zoom Breakout Room Function

If counsels want to consult with each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room. The Judge or the co-host/bailiff will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

Showing Documents to Witnesses During Examination

Counsel may share documents with witnesses during examination in the same manner which is discussed above. If shared, counsel may scroll down the document page by page or go to a specific page; or counsel could give control over the document to another participant on request, such as the co-host/bailiff, who may scroll through it. If sent as an attachment in an email or group chat, everyone may download and view the document on their own.

Counsel are encouraged to share this Order/Guideline with the parties they represent, witnesses and persons who request to observe the hearing through counsel or the party it represents.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

EXXONMOBIL CHEMICAL COMPANY

and

Case 16-CA-253157

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
LOCAL 13-2001

and

Case 16-CA-253167

EXXONMOBIL REFINING & SUPPLY

ORDER

On April 13, 2020, the General Counsel (the GC) issued a Consolidated Complaint and Notice of Hearing, which scheduled an in-person hearing on July 13, 2020 at the National Labor Relations Board's Houston, Texas office. On June 5, 2020, a prehearing conference was held. At that time, the parties agreed to hold the hearing by videoconference on the Zoom platform. The GC, thereafter, issued an Order rescheduling the hearing for July 27, 2020 by videoconference and to continue on consecutive days thereafter until concluded. Based upon the foregoing, I **ORDER** that, under §102.35(c) of the Board's Rules, due to the "compelling circumstances" created by the COVID-19 pandemic, the hearing in this case will be held by videoconference via the Zoom Government platform. See *Morrison Healthcare*, 369 NLRB No. 76 (2020).

Zoom Hearing Procedures

The hearing record will, accordingly, open via Zoom on **July 27, 2020 at 10:00 am, CST**. A Zoom invitation and connected instructions will be emailed to the parties under separate cover. Once on the record, counsel will state their appearances, the GC will offer the formal papers, the parties will present preliminary motions, if any (e.g., motion to amend the complaint, motion to amend the answer, etc.) and opening statements will commence. A Sequestration Order will also be

admitted as ALJ Exhibit 1 at the start of the hearing.¹ Once these matters have been completed, the hearing will be adjourned to July 28, 2020 at 10:00 am, CST, when witness testimony will be taken and the trial will continue on consecutive days until completion.

Subpoenaed Materials, Exhibits and Court Reporter

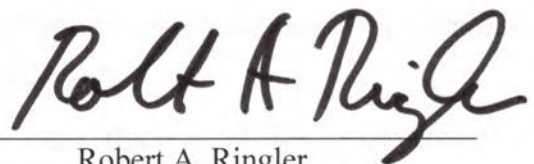
The parties are further **ORDERED** to take these actions:

1. Email in PDF format subpoenaed materials to opposing counsel by no later than the time that the hearing opens.²
2. Email pre-marked hearing exhibits in PDF format by no later than the time that the hearing opens to all parties, the court reporting service and the undersigned.³
3. Email any other pre-marked hearing exhibits, if any, in PDF format to all parties prior to the start of the offering witness' testimony.⁴
4. The GC must email formal papers in PDF format to all parties, the court reporting service, and the undersigned by no later than 7 days prior to the opening of the hearing.⁵
5. The GC must coordinate the court reporter's participation; this includes notifying the court reporter of the trial schedule, forwarding all relevant orders and providing their email address to all parties and the undersigned by no later than 7 days prior to the opening of the hearing.

Zoom Pre-Hearing Conference

The parties are further **ORDERED** to attend a pre-hearing conference on July 20, 2020 at 10:00 am, CST. A Zoom invitation will be emailed to the parties under separate cover. During this conference, this Order will be reviewed, and any connected questions can be addressed.

Dated at Washington, DC, July 2, 2020



Robert A. Ringler
Administrative Law Judge

¹ The Sequestration Order has been affixed and labeled Attachment A.

² In the interest of efficiency, it is strongly encouraged that such material will be sent far in advance of the hearing.

³ It is also urged that pre-marked exhibits will be exchanged well in advance of the hearing.

⁴ It is expected that these few exhibits, if any, will be limited to subpoenaed documents not previously in a party's possession or exhibits that were not reasonably expected to be offered.

⁵ The GC shall include this Order in the formal papers.

ATTACHMENT A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

EXXONMOBIL CHEMICAL COMPANY

and

Case 16-CA-253157

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
LOCAL 13-2001**

and

Case 16-CA-253167

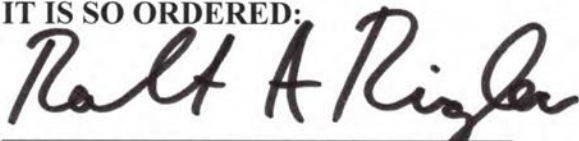
EXXONMOBIL REFINING & SUPPLY

SEQUESTRATION ORDER

All persons, who are going to testify in this Zoom videoconference hearing, with specific exceptions, may be present in the videoconference courtroom only when providing testimony. The exceptions herein are alleged discriminatees, natural persons who are parties, and a person who is shown by a party to be essential to the presentation of the party's case. Such individuals may remain in the videoconference courtroom, even if they are going to testify, or have testified. Alleged discriminatees, including charging parties, however, may not remain in the courtroom when other witnesses on behalf of the General Counsel or the Charging Party are giving testimony regarding events about which the alleged discriminatees will be expected to testify.

Additionally, from the commencement of the videoconference hearing until it is finally closed, no witness may discuss with other potential witnesses either the testimony that they have given or intend to give. Under the rule as applied by the Board, with one exception, counsel for a party may not in any manner, including the showing of transcripts, inform a witness about the content of the testimony given by a preceding witness, without express permission of the undersigned. The exception is that counsel for a party may inform their own witness of the content of testimony, including the showing of transcripts, given by a witness for the opposing side in order to prepare for the rebuttal of such testimony. Counsel must police the rule, bring any violation of it to the Court's attention immediately, and inform potential witnesses of their obligations under the rule.

IT IS SO ORDERED:

A handwritten signature in black ink, appearing to read "Robert A. Ringler", is written over a horizontal line.

Robert A. Ringler, Administrative Law Judge

ALJ Exhibit No. 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

OXARC, INC.

and

Cases 19-CA-230472

TEAMSTERS LOCAL 839

and

Cases 19-CA-237336
19-CA-237499
19-CA-238503

TEAMSTERS LOCAL 690

and

19-CA-248391

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

and

19-CA-232728

JARED FOSTER, An Individual

Prehearing Order: Access, Instructions, and Guidelines Regarding Zoom Hearing

The following order addresses how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on Monday, August 3, 2020 at 9:00 a.m. Pacific time. It also includes additional instructions and guidelines regarding the conduct of the Zoom hearing.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you may join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer or laptop by hovering over the Resources tab in the upper right of the screen and selecting "Download Zoom Client." If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the “Join Zoom” link below. Alternatively, you can click on “Join a Meeting” in your Zoom app and enter the meeting code. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser.

When you enter, select “Join by Computer Audio” (even if you are connecting via a smart phone). You will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and networking.
Judge Sotolongo is inviting you to a scheduled ZoomGov meeting.

Topic: Oxarc, Inc. Trial.

Time: This is a recurring meeting.

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1619352915?pwd=bkJoNVVGNmhnOTYrSEJXRC8xUWErdz09>

Meeting ID: 161 935 2915

Password: 253628

One tap mobile

+16692545252,,1619352915#,,,,0#,,253628# US (San Jose)

+16468287666,,1619352915#,,,,0#,,253628# US (New York)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

833 568 8864 US Toll-free

Meeting ID: 161 935 2915

Password: 253628

Find your local number: <https://www.zoomgov.com/u/ad30ptWesd>

Join by SIP

1619352915@sip.zoomgov.com

Join by H.323

161.199.138.10 (US West)

161.199.136.10 (US East)

Meeting ID: 161 935 2915

Password: 253628

Join by Skype for Business

<https://www.zoomgov.com/skype/1619352915>

If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or call Mark Eskenazi, at 202-273-1080 for assistance. Mr. Eskenazi

is an attorney in the Office of the Executive Secretary at the National Labor Relations Board. Mr. Eskenazi has been screened from working on this case if it comes before the Board. He will be serving as Courtroom Deputy to assist the trial judge with Zoom technical issues throughout the hearing. If you cannot reach Mr. Eskenazi, call the Judges Division at 202-501-8800 for assistance.

II. List of individuals who may join the meeting, including Non-participant Observers (public access)

No later than 9:00 am PT on Friday, July 31, 2020, counsel must email the Judge, Courtroom Deputy, and court reporter a list of all hearing participants to which counsel has sent the access information. This list is for procedural use only and will not be part of the record. The list must include the individual's name, email address, telephone number and role in the proceeding. This list is necessary for the Judge to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room. However, parties will not be precluded from calling witnesses who are not on this list if necessary for the presentation of their case.

The parties must provide the identity and email addresses of any nonparticipant observers to the Regional Office no later than 9:00 am PT on Friday, July 31, 2020. It is the responsibility of the Regional Office to advise nonparticipant observers the manner in which they will be able to access the hearing. Identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

III. Additional Instructions and Guidelines

No videotaping or recording

DO NOT VIDEOTAPE, BROADCAST, TELEWISE, AUDIO RECORD, OR PHOTOGRAPH, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER. Violation of this rule or causing disruptions may result in removal and other sanctions.

Providing all potential exhibits to the Judge, Courtroom Deputy, your witnesses and opposing parties in advance of hearing

It would greatly facilitate the conduct of the hearing if the parties emailed all of their potential exhibits to the Judge, Courtroom Deputy, their own witnesses and opposing counsel no later than 9:00 am PT on Friday, July 31, 2020. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the complaint may be witnesses. Therefore, the parties are requested to provide any exhibits they plan to use with such witnesses to opposing counsel in advance-with the exception of Jencks materials.

In lieu of email, a party can provide exhibits to the Judge, Courtroom Deputy, other parties by uploading them to the NLRB's SharePoint page for this case. The parties have been emailed a link to this page. If a party cannot locate the email, they should check their Spam and other folders or contact Mr. Eskenazi. It is requested that a party that may potentially introduce an audio or video exhibit, or another very large file, inform the Judge, Courtroom Deputy, and opposing counsel no later than 9:00 am PT on Friday, July 31, 2020. Such files may not be transmittable over email and may need to be uploaded to the SharePoint page.

All exhibits should, if at all possible, be pre-marked, paginated and converted into one bookmarked PDF file per party.

All confidential personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the exhibits.

Calling witnesses and forwarding the electronic meeting invitation ("e-vite")

Counsel must forward the e-vite to their witnesses or provide the ALJ with the witnesses' email addresses so that the Judge or Courtroom Deputy can send an e-vite to them. When counsel forwards the e-vite, counsel should take care not to also forward the email address of the Judge or the Courtroom Deputy.

Counsel must also ensure that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing.

Witnesses may not use a virtual background. Opposing counsel must be able to see who, if anyone, is in the room with them when they testify.

The Judge or Courtroom Deputy will send a witness an e-vite to the Zoom hearing if counsel did not already forward an e-vite.

The Judge or Courtroom Deputy will admit witnesses into the hearing from the waiting room.

Conferring via the Zoom breakout room function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room.

The Judge or his co-host will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

Jencks Statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email or the Zoom chatroom function, after a witness has testified on direct examination. After cross-examination opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

Showing documents to witnesses during examination

Counsel may use the “Share Screen” tool to share a document on the screen or use the Zoom group chat function to send a document as an attachment to a witness, other counsel, the Judge, and the reporter. However, computer email or SharePoint may be a better option in that each participant can follow along at his or her own pace.

If shared, counsel may scroll down the document page by page or go to a particular page; or counsel could give control over the document to another participant on request, who may scroll through it.

If sent as an attachment via email, SharePoint, or group chat, everyone may download and view the document on their own. Ensure exhibits are properly marked, paginated, and bookmarked before the hearing or before being offered into the record as an exhibit.

The Judge may ask, upon the request of a party, witnesses to move the camera to show their surroundings.

Offering exhibits into the record

Counsel may email or use SharePoint or the Zoom group chat function to send an exhibit to other counsel, the Judge, and the reporter if they have not already done so; they can then download it to their computer as an admitted exhibit. Email and SharePoint are the recommended methods for sharing exhibits.

Counsel are encouraged to share this Order/Guideline with the party it represents, witnesses and persons who request to observe the hearing through counsel or the party it represents.

So Ordered.

Dated at San Francisco, California, this 20th day of July 2020.



Ariel L. Sotolongo
Administrative Law Judge.

Served by email upon the following:

For the NLRB Region 19:

Adam D. Morrison, Esq.

Email: adam.morrison@nlrb.gov

Sarah McBride, Esq.,

Email: sarah.mcbride@nlrb.gov

For the Charging Party:

Matthew Harris, Staff Attorney,
Email: mharris@teamster.org (IBT)

For the Respondent:

Rick Grimaldi, Esq.,
Email: rgrimaldi@fisherphillips.com
Samantha S. Bononno, Esq.,
Email: sbononno@fisherphillips.com
Kelsey E. Beerer, Esq..
Email: kbeerer@fisherphillips.com
(Fisher Phillips, LLP)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES, SAN FRANCISCO OFFICE**

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 46
(Prime Electric)**

and

Case 19–CB–243572

(b) (6), (b) (7)(C), An Individual

**ZOOM HEARING INVITATION
WITH INSTRUCTIONS AND PROTOCOLS**

This is the invitation to the Zoom hearing scheduled to begin on August 25, 2020 at 11 am PST. It provides the access links and numbers necessary for all identified participants (counsel and party representatives, assistants, and witnesses, and the court reporter and any interpreters) and observers to join the Zoom hearing. It also includes detailed instructions and protocols for joining and participating in or observing the Zoom hearing. *Read and follow them carefully.*

I. PARTICIPANTS

A. Zoom Access Links and numbers

You may join the Zoom hearing with a computer or laptop by clicking on the “Join Zoom Meeting” link below. Alternatively, if you are using a mobile smart phone or tablet, you can click “Join a Meeting” in your Zoom app and enter the meeting ID and password.

Join ZoomGov Meeting:

<https://www.zoomgov.com/j/1605299945?pwd=OHF2WXJMT1owWUVLSSJlL0FtYUZrdz09>

Meeting ID: 160 529 9945

Passcode: 363422

If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the hearing than the browser.

When you enter, select “Join by Computer Audio” even if you are connecting via a smart phone. You will be automatically placed in the Zoom waiting room until admitted to the hearing.

If you are unable to join the hearing online or wish to use your phone for audio you may join the hearing by calling the appropriate phone number below and entering the meeting ID and password when prompted.

Dial by your location:

+1 669 254 5252 US (San Jose)
+1 646 828 7666 US (New York)
833 568 8864 US Toll-free

Meeting ID: 160 529 9945

Passcode: 363422

This will allow you to communicate with the judge and other participants and obtain assistance if needed to join the hearing via the internet.

If you cannot join the hearing by any of these methods, immediately contact one of the other participants directly by email or phone for assistance.

B. Instructions and Protocols for the Zoom hearing.

Audio/Video equipment required. You must have access to a computer, laptop or other device that can transmit and receive audio and video. Both a primary and a secondary device is recommended.

Primary device: A computer or laptop is strongly recommended as your primary device. It will provide more functionality and is best for sending and receiving documents.

Secondary device: A mobile smart phone or tablet is recommended as a secondary or backup device to maintain communication if technical problems occur during the hearing. For example, if there are audio problems with your computer, you could use it solely for video (by clicking “Leave computer audio” in the Zoom audio settings) and call in with your phone for audio.

Zoom account required. If you do not have a Zoom account, you must create one; it is free. If using a computer or laptop to join the hearing, go to Zoom’s website at www.zoom.us, place your cursor over the “Resources” tab in the upper right of the home screen, and select “Download Zoom Client” from the drop-down box. If using a smart phone or tablet, go to the App Store and download the free Zoom app.

Internet connection required. You must have access to a strong and stable internet connection—either wired/ethernet cable (recommended) or wireless/wifi.

Preparing for the hearing. Take the following steps at least 30 minutes before joining the Zoom hearing:

- 1) *Location.* Set up your computer, laptop, or other primary device in a quiet room or space where you will not be distracted or interrupted.
- 2) *Background.* Make sure there are no uncovered windows, lights, or distracting images or messages directly behind you. Virtual backgrounds should also be free of distracting images or messages. Witnesses may not use virtual backgrounds.
- 3) *Power source.* Connect your primary and secondary devices to electrical outlets or portable power sources to ensure they will not run out of battery.
- 4) *Internet.* Test your internet connection. Close any unnecessary applications on your primary device other than Zoom. If using wifi, disconnect other devices, including your secondary device (unless or until needed), from the same wifi network.
- 5) *Camera.* Position the web camera so that it is facing you at or slightly above eye level.
- 6) *Microphone and speaker.* Make sure the microphone is close enough to pick up your voice. And raise the speaker volume so it is loud enough for you to hear others. If you will be using separate devices for video and audio (e.g., a computer for video and a phone for audio), be sure that the microphone and the speaker on the video device are off to prevent audio feedback.
- 7) *Mobile phone notifications.* Set your mobile phone notifications on vibrate only.

Joining the hearing. Join the Zoom hearing at least 5 minutes before the scheduled time using the access link or numbers listed above. Wait in the Zoom waiting room until you are admitted to the hearing by the judge. Be patient, it may take a few minutes. If there is an unexpected delay, the judge will send a message to the waiting room, which will appear on the waiting room screen.

Participating in the hearing. An unfair labor practice hearing is an official Government legal proceeding. As such, you are expected to abide by the following protocols:

Decorum and conduct. Observe rules of decorum, civility, and ethics and show respect for the dignity of the legal proceeding by your conduct, language, and attire.

Cooperation and compliance. Cooperate with each other and the court reporter, and comply with the judge's reasonable instructions (e.g., to adjust your position, lighting, or web camera, or to mute or unmute your microphone).

No videotaping or recording. No videotaping or audio recording is permitted during any part of the Zoom proceeding, except by the court reporter who is responsible for preparing the official record.

If you fail to abide by these protocols, you may be removed from the Zoom hearing and/or sanctioned under Sec. 102.177 of the NLRB's Rules and Regulations.

Party representatives and assistants.

Forwarding this invitation. This invitation has been emailed to the parties' counsel or representatives of record only. It is your responsibility to forward it to additional party representatives and assistants who will participate in the hearing and ensure that they understand and follow all the Zoom hearing instructions and protocols.

Informing the judge. You must inform the judge of the identity of any additional party representatives and assistants as soon as possible so that they will be admitted from the Zoom waiting room in a timely manner.

Communicating privately during the hearing. If you need to speak privately with other counsel or your party representatives and assistants during the hearing, you may request the judge to create a private Zoom "breakout room" for this purpose.

Court reporter and interpreter. The NLRB Regional Office is responsible for scheduling a court reporter and forwarding this invitation to him/her. If an interpreter is needed for a witness, the party calling that witness is responsible for scheduling the interpreter, either through the NLRB Regional Office or directly, and forwarding this invitation to him/her. The identity of the court reporter and the interpreter should be emailed to the judge before the hearing so that they will be admitted from the Zoom waiting room in a timely manner.

Witnesses. If you will be calling witnesses, you are responsible for the following:

Invitation. Providing your witnesses with this invitation.

Instructions and protocols. Ensuring that your witnesses understand and follow all the Zoom hearing instructions and protocols set forth in the invitation.

When to join hearing. Informing your witnesses when they should join the Zoom hearing and enter the waiting room.

Witness contact information. Obtaining a phone number and/or email address to contact the witness in the event communication is interrupted by internet or other technical problems during the hearing.

Notification to the judge. Informing the judge of the identity of your witnesses so that they will be admitted from the Zoom waiting room in a timely manner.

Sequestration. Informing your witnesses of any sequestration order issued by the judge and ensuring they do not violate it by observing or listening to the Zoom hearing.

Exhibits.

Formatting exhibits. Exhibits must be in the following formats:

PDF for documents
JPG for photographs/images
MP4 for videos

Marking exhibits. Exhibits must be premarked before they are shared and offered at the hearing (e.g., GC Exh. 1, CP Exh. 1, R. Exh. 1). There is no requirement that they be offered at the hearing in the same numerical order (for example, R. Exh. 3 can be offered into evidence before R. Exh. 2).

Paginating exhibits. Exhibits longer than one page must include page or Bates numbers.

Sharing exhibits. With certain exceptions (e.g., Jencks statements and exhibits used to refresh recollection or impeach), the parties are strongly encouraged to distribute as many exhibits to the other parties, the judge, and the witness either before the hearing or before a witness testifies. Options for distributing or sharing exhibits before and during the hearing include:

Hand delivery/hard copy (before hearing). This is strongly recommended for witnesses.

Email (before and during hearing). This may be used to distribute small and moderate-sized exhibits. However, if used during the hearing, it may take several minutes for everyone to receive the email.

NLRB Sharepoint webpage (before and during hearing). This is recommended for exhibits that may be too large to send by email, such as audio and video recordings.

Instructions: Notify the judge at least 3 business days before the hearing that an NLRB Sharepoint webpage should be created for this purpose. Once created, the judge will email the Sharepoint link and instructions to all parties and the court reporter.

Zoom share-screen function (during hearing). This may be used to share an exhibit, including audio and video recordings, with a witness and other participants during the hearing. Counsel should practice using this function before the hearing. For helpful instructions, see <https://support.zoom.us/hc/en-us/articles/201362153-Sharing-your-screen-in-a-meeting>

Consolidating and bookmarking exhibits. To the extent possible, multiple exhibits should be emailed to participants or uploaded to the NLRB Sharepoint webpage in a single PDF document with each exhibit bookmarked so they can be accessed and viewed easily.

Instructions: Open a PDF document; left-click on “Tools”; left-click on “Combine files”; and follow the instructions, adding each premarked exhibit in numerical order. When all the exhibits have been added, right-click on the open PDF document; left-click “Add Bookmark” in the popup window; place the cursor at beginning of the first exhibit; left-click the new bookmark icon in the shaded left-side column (the ribbon with a plus sign); and type the exhibit number in the shaded box. Then move the cursor to the beginning of the next exhibit and repeat. When finished, save the bookmarked PDF document.

Providing exhibits to court reporter. The parties are responsible for ensuring that their exhibits are provided to the court reporter for inclusion in the official record. The exhibits should be provided by email or uploaded to the NLRB Sharepoint webpage for retrieval no later than the end of the same day they are offered and admitted or the beginning of the next hearing day.

Redacting sensitive personal identifying information (SPII). Redact any SPII, including social security numbers, driver’s license numbers, and credit card and financial account numbers, from exhibits.

Technical problems. Technical problems (internet, audio, or video delays or interruptions) may occur during the hearing. They usually cause only short delays provided the proper steps are taken.

Follow the instructions and protocols. Follow the instructions and protocols above by using a strong and reliable internet connection, having a secondary or backup device to access or communicate with the Zoom hearing or participants if necessary, and emailing your alternative contact information to the judge and/or other participants prior to the hearing. (This information should not be shared orally during the Zoom hearing if it is considered private.)

Mute your microphone if not speaking or actively participating. This will help to prevent others from hearing your audio feedback or background noise on their devices.

Notify the judge. Immediately notify the judge if your audio and/or video feed is delayed or otherwise not working properly. You may do so either orally or by signaling with your hands that you are having a problem. The judge will try to communicate with and assist you by using the Zoom chat function or by contacting you on your secondary or backup device.

Reboot your computer. Often technical problems can be fixed by rebooting your computer or laptop and then re-accessing the Zoom hearing with the same link and numbers. If possible, advise the judge and/or other participants that you will be doing this before leaving the hearing, or as soon as possible thereafter by phone or email if you have already been disconnected from the hearing. You will be re-admitted to the hearing when the judge sees that you have re-entered the Zoom waiting room.

II. OBSERVERS

A. Zoom hearing access by observers

Obtaining the Zoom hearing access information. Nonparticipating employees, members, associates, or agents of a party or counsel of record may request a copy of this invitation from any of the parties or counsel or the NLRB Regional Office.

The general public and the media must request the invitation from the NLRB Regional Office. The Regional Office's contact information may be found on the NLRB's website at www.nlr.gov/about-nlr/who-we-are/regional-offices.

Providing identifying information. For security reasons, every observer must provide his/her identifying information—including full name (which must match the Zoom name), email address, and telephone number—to the party, counsel, or NLRB Regional Office that is requested to forward the invitation.

Forwarding the invitation. Unless there is reason to doubt the accuracy of the identifying information provided by the observer, or he/she is a known security risk, the party, counsel, or NLRB Regional Office receiving the request should forward the invitation to the observer's email address.

Notifying the judge. Any party, counsel, or NLRB Regional Office that forwarded the invitation to one or more observers should email a list of those observers with their identifying information to the judge at least 24 hours before the hearing.

No one will be admitted to the Zoom hearing from the waiting room unless his/her identifying information has been provided to the judge by a party, counsel, or the NLRB Regional Office.

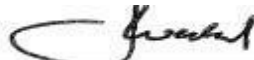
B. Instructions and Protocols for Observing the Zoom hearing

Joining the hearing. Observers may join the Zoom hearing in the same manner and with the same access link or numbers as participants. Like the participants, they will be placed in the Zoom waiting room until they are admitted to the hearing by the judge. It may take 15–20 minutes or more, depending on the number of participants (who will be admitted first) and observers, and any technical or other preliminary issues that need to be addressed. If there will be an extended delay, the judge will send a message to the waiting room, which will appear on the waiting room screen.

Video and audio output. Observers must have their video and audio output off at all times, both when they join and are admitted from the waiting room and thereafter throughout the hearing. They may not turn on their video or audio output at any time or share messages or images of any kind.

Violators will be removed and may also be reported to Zoom and appropriate federal authorities for further sanctions.

Dated, San Francisco, California, August 11, 2020



Jeffrey D. Wedekind
Administrative Law Judge

Served by email on the following:

Sarah Burke, Esq.	sarah.burke@nlrb.gov
David Hannah, Esq.	dhannah@unionattorneysnw.com
Joel Leahy	joelleahy@gmail.com
Ryan Hemingway	rhemingway@primee.com

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH**

**LABORERS INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL NO. 252
(JR HAYES AND SONS, INC.)**

and

Case 19-CB-255602

(b) (6), (b) (7)(C), an Individual

**WASHINGTON AND NORTHERN IDAHO
DISTRICT COUNCIL OF LABORERS
(JR HAYES AND SONS, INC.)**

and

Case 19-CB-255604

(b) (6), (b) (7)(C), an Individual

**ORDER REQUIRING THE SEPTEMBER 8, 2020 HEARING IN THIS MATTER TO BE
CONDUCTED BY VIDEOCONFERENCE**

The hearing in this matter is currently scheduled to begin in-person at 1:00 p.m. Pacific Time (PT), on September 8, 2020, and consecutive days thereafter, in the James C. Sand Hearing Room of the Jackson Federal Building, 915 Second Avenue, 29th Floor, Seattle, Washington. On August 4, 2020, I held a status conference call with counsel in this case and informed them that due to the Coronavirus Disease (COVID-19) pandemic, the hearing in this matter shall be conducted via video conference using the Zoom for Government platform. I rely upon Section 102.35(c) of the Board's Rules and Regulations and the Board's recent guidance regarding the conduct of hearings in *Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020), due to the "compelling circumstances" created by the COVID-19 pandemic.

During the status conference, Respondent's counsel raised objections to holding this hearing via Zoom rather than in-person. I disagree, and find this matter is appropriate for a Zoom hearing. During the call, Respondent's counsel conveyed the following concerns that would make a Zoom hearing inappropriate: numerous witnesses where credibility must be evaluated as well as many documents that would be entered into the record. Based on these concerns, Respondent's counsel expressed concern that Respondent's case would be prejudiced, and thus, requested a postponement until safe to do so in-person. Although Respondent's counsel raises valid concerns, I believe that due process will be protected with a Zoom hearing, and an undue delay would prejudice all parties involved. Witness credibility may be assessed via Zoom. The Centers for Disease Control advises that when meeting in-person indoors with those

not in the same household, all individuals should wear masks or facial coverings.¹ Under these circumstances, credibility is *more* difficult to assess as the witness's demeanor is shielded. With a Zoom hearing, the witness's face will not be obscured. The numerous documents also may be uploaded and shared with the parties via SharePoint, as described below. While an in-person hearing is ideal, during this time period of the COVID-19 pandemic, I do not believe it is appropriate to delay this matter for at least several months before we can safely travel and meet in person without any restrictions.

The Prehearing Order below informs the parties and counsel on how to access Zoom technology and instructions and guidelines regarding the Zoom Hearing.

Prehearing Order: Access, Instructions, and Guidelines Regarding Zoom Hearing

The following order addresses how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on Tuesday, September 8, 2020, at 1:00 p.m. PT. It also includes additional instructions and guidelines regarding the conduct of the Zoom hearing.

Furthermore, I will have a Courtroom Deputy assigned to this matter to assist me with Zoom technical issues throughout the hearing. If the Courtroom Deputy is assigned from the Office of the Executive Secretary at the National Labor Relations Board (Board) or from the staff of a Board member, that individual will be screened from working on this case if it comes before the Board.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you may join the hearing online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended. It is possible to join the hearing online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer or laptop by hovering over the Resources tab in the upper right of the screen and selecting "Download Zoom Client." If you are using a smart phone, install Zoom from the App Store.

Join the Zoom hearing a few minutes before the scheduled time. You may do so by clicking on the "Join Zoom" link below. Alternatively, you can click on "Join a Meeting" in your Zoom app and enter the meeting code. If you are asked whether to open with the Zoom app

¹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the hearing than the browser.

When you enter, select “Join by Computer Audio” (even if you are connecting via a smart phone). You will be automatically placed in an online waiting room until admitted to the hearing. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and networking.

II. List of individuals who may join the hearing, including non-participant observers (public access)

No later than 9:00 a.m., PT on Wednesday, September 2, 2020, counsel must email the Judge, Courtroom Deputy, and court reporter a list of all hearing participants to which counsel has sent the access information. This list is for procedural use only and will not be part of the record. The list must include the individual’s name, email address, telephone number and role in the proceeding. This list is necessary for the Judge or Courtroom Deputy to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room. However, parties will not be precluded from calling witnesses who are not on this list if necessary for the presentation of their case.

The parties must provide the identity and email addresses of any nonparticipant observers to the Regional Office also **no later than 9:00 a.m., PT on Wednesday, September 2, 2020**. It is the responsibility of the Regional Office to advise nonparticipant observers the manner in which they will be able to access the hearing. Identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge’s instructions, they may be subject to removal and other sanctions.

III. Additional Instructions and Guidelines

A. No videotaping or recording

DO NOT VIDEOTAPE, BROADCAST, TELEVISION, AUDIO RECORD, OR PHOTOGRAPH, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER.

Violation of this rule or causing disruptions may result in removal and other sanctions.

B. Providing subpoena documents and all potential exhibits to the Judge, Courtroom Deputy, and opposing parties

It would greatly facilitate the conduct of the hearing if the parties uploaded all potential exhibits to the appropriate folder on the SharePoint page created for this case. **These exhibits**

must be uploaded no later than the start of the hearing at 1:00 p.m. PST on Tuesday, September 8, 2020. This link along with instructions will be sent to the parties in a separate emailed correspondence. These folders will be locked, and thus not viewable by the other parties, until the start of the hearing. All exhibits shall be pre-marked, paginated and converted into one bookmarked PDF file per party. All confidential personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the exhibits.

In addition, the parties may upload all subpoenaed documents to the appropriate folder on the SharePoint page created for this case. **These subpoenaed documents must be uploaded no later than the start of the hearing at 1:00 p.m. PST on Tuesday, September 8, 2020. However, in the spirit of cooperation, I strongly encourage the parties to upload these documents at least one business day prior to the hearing to provide an opportunity for the parties to review all the documents prior to the hearing.**

Finally, I strongly encourage the parties to agree to joint stipulations of facts and joint exhibits. A SharePoint folder may be created if applicable.

C. Calling witnesses and forwarding the electronic meeting invitation (“e-vite”)

Counsel must forward the trial e-vite that will be issued *after* the August 21 Zoom status conference to their witnesses. When counsel forwards the e-vite, counsel should take care not to also forward the email address of the Judge or the Courtroom Deputy.

Counsel must also ensure that their witnesses have the necessary equipment and internet connection, including WIFI, to join and testify at the Zoom hearing.

Witnesses may not use a virtual background. Opposing counsel must be able to see who, if anyone, is in the room with them when they testify. The Judge may ask, upon the request of a party, witnesses to move the camera to show their surroundings.

The Courtroom Deputy or the Judge will admit witnesses into the hearing from the waiting room. Witnesses may be sequestered at the start of the hearing, if requested by the parties.

D. Showing documents to witnesses during examination

There are numerous ways that Counsel may show witnesses documents during the hearing. Counsel may use the “Share Screen” tool in Zoom to share a document on the screen or use the Zoom group chat function to send a document as an attachment to a witness, other counsel, the Judge, and the reporter. Counsel may also send via mail the proposed exhibits to the witnesses through which the exhibits will be introduced at the hearing. These exhibits may be sealed separately in individual envelopes, placed in a box, and the witness may break the seal of the box and each exhibit folder when asked during the hearing. Witnesses may be asked to return the exhibits or destroy the exhibits—this is at the discretion of the parties.

The Judge may ask, upon the request of a party, witnesses to move the camera to show their surroundings.

E. Offering exhibits into the record

Counsel will use SharePoint, the Zoom group chat function, or email to send an exhibit to other counsel, the Judge, and the reporter if they have not already done so; they can then download it to their computer as an admitted exhibit. Email and SharePoint are the recommended methods for sharing exhibits.

Counsel are encouraged to share this Order/Guideline with the party it represents, witnesses and persons who request to observe the hearing through counsel or the party it represents.

F. Conferring via the Zoom breakout room function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room.

The Judge or the Courtroom Deputy will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

G. Jencks Statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email or the Zoom chatroom function, after a witness has testified on direct examination. After cross-examination opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

So Ordered.

Dated at San Francisco, California, this 7th day of August 2020.



Amita B. Tracy
Administrative Law Judge

Served by email upon the following:

For the NLRB Region 19

Anne Pomerantz, Regional Director
Helena A. Fiorianti, Esq., Email: helena.fiorianti@nlrb.gov

For the Respondents:

Benjamin Berger Esq., Email: berger@workerlaw.com
Danielle Franco-Malone, Esq., Email: franco@workerlaw.com
(Barnard Iglitzin & Lavitt, LLP)

Noel McMurtray, Esq., Email: nmcmurtray@outlook.com

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES**

LEHIGH SOUTHWEST CEMENT, INC.

and

Case 20-CA-244239

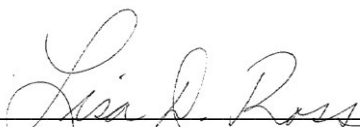
**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO/CLC**

**ORDER REQUIRING THE JULY 23, 2020 HEARING IN THIS MATTER TO BE
CONDUCTED BY VIDEOCONFERENCE**

The hearing in this matter is currently scheduled to begin at 9:00 a.m. (PT) on July 23, 2020, at a location to be designated in Redding, California, and on consecutive days thereafter. On June 10, 2020, I held a prehearing telephone conference call with counsel for the parties to solicit their questions, concerns, and positions on conducting this hearing in-person or via videoconferencing using the Zoom for Government platform. Based on the parties comments as to the hurdles to an in-person hearing, I hereby order that, per Section 102.35(c) of the Board's Rules and Regulations, due to the "compelling circumstances" created by the current Coronavirus Disease (COVID-19) pandemic, the hearing in this case will be conducted remotely via videoconference using Zoom technology, *see, Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020). I will open the record telephonically on **July 23, 2020, at 9:00 a.m. Pacific Time** in order that the parties can exchange subpoenaed and other necessary documents/exhibits and rule on any outstanding pretrial motions. Thereafter, the testimonial portion of the hearing will commence on July 24, 2020, at 9:00 a.m.

While I have discussed the parameters of a videoconference hearing with the parties, I will provide them with written guidelines and instructions for conducting the hearing using Zoom. I will hold a subsequent telephonic conference on **Thursday, July 9, 2020, at 10:00 a.m. Pacific Time** to discuss, *inter alia*, how counsel can familiarize themselves with the technology and its features. Prior to the start of the hearing on July 23, 2020, I will provide the parties with information on how to electronically access the hearing.

Dated at San Francisco, CA, June 12, 2020



Lisa D. Ross
Administrative Law Judge

Served via electronic mail upon the following:

For the General Counsel:

David Reeves, Esq
NLRB Region 20

David.Reeves@nlrb.gov

For Respondents:

Robert Murphy, Esq.
Jackson Lewis, P.C.

robert.murphy@jacksonlewis.com

For Charging Party Union:

Antonia Domingo, Esq.
United Steelworkers

adomingo@usw.org

VIDEO HEARINGS

Technology

Requirements

All participants (i.e., attorneys, representatives, and witnesses) must use a: (1) a computer, laptop, tablet, or smartphone able to run the “Zoom” videoconferencing platform; (2) a connected webcam/camera and a microphone; and (3) a reliable, high-speed internet connection. Smartphones and tablets only may be used with a headset or earbuds with a microphone, and the device must remain stationary during testimony. A computer or laptop with audio/video capability is highly recommended. A second option is to use a smart phone or tablet to access the video-hearing and a second electronic device to view documents, if possible.

It is recommended that participants have a Zoom (free) account tied to the email address they provide to counsel so their profile, with their first and last name, appears when they join the video hearing.

The following are links to resources to familiarize yourself with the Zoom basics (Right Click and “Open Hyperlink”):

General Overview

<https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-Tutorials>

Join a Meeting:

<https://support.zoom.us/hc/en-us/articles/201362193>

Testing Audio and Video:

<https://support.zoom.us/hc/en-us/articles/201362283-Testing-computer-or-device-audio>

Audio Echo (Feedback):

<https://support.zoom.us/hc/en-us/articles/202050538-Audio-Echo-In-A-Meeting>

Sharing a Screen/Document through Zoom:

<https://support.zoom.us/hc/en-us/articles/201362633-How-Do-I-Start-A-Screen-Share-Meeting->

Using Virtual Backgrounds link below; sample backgrounds option 1 & option 2:

https://support.zoom.us/hc/en-us/articles/210707503-Virtual-Background#h_bebf36a4-c1e9-4769-9d3c-e0d01457d341

Counsel must ensure their witnesses have or have access to the equipment, internet access, and training necessary to fully participate in the Zoom video hearing.

The Judge will provide counsel with a link and information and password to access the Zoom video hearing. Counsel will provide that information only to representatives of the parties and their witnesses in advance of the hearing. Others may join the call as spectators, but please only distribute the access information directly to those who are truly interested in the proceedings to minimize the possibility of someone hacking the proceedings just to be disruptive. The ALJ will disseminate a separate pdf document containing access information for the parties to forward to witnesses. Do not directly forward this email to other individuals, because it contains the ALJ’s contact information. Save the pdf and attach it to a new email before sending it.

Counsel must provide the ALJ a list of all individuals to which counsel has sent the access information. This list is for procedural use only and will not be part of the record. It is to be sent to the ALJ and not the opposing party. The list must include the individual’s name, email address, telephone number and role in the proceeding (e.g. co-counsel who will question witnesses, co-counsel not expected to question witnesses, representative, representative who is also a witness, witness, spectator). This list is necessary for the ALJ to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room.

Test your connection and setup prior to the hearing at <https://zoom.us/test>

Setting-Up Equipment and Area

- Set up your computer, laptop, or tablet in a well-lit, quiet room with a non-distracting background and with the strongest light source in front of you.
- Station camera at or slightly above eye level (the witness’s face and what is in front of them should be visible) and speak directly at the camera, not at the screen. The Judge may ask the witness to move the camera to show their surroundings.
- Headsets or earphones with built-in microphones may help reduce background noise.
- Avoid running unnecessary applications besides Zoom to conserve processing power and networking.

- Mute sounds from all other applications (e.g., email notifications, chat messaging, etc.).
- Plug computer, laptop, tablet or phone into a good power source while at the hearing.
- If possible, avoid sharing your internet/wifi service with others during the hearing.
- Dress the same way you would dress for in-person appearance.

Procedural Matters

Subpoenaed Documents and Joint Exhibits

- Parties should serve subpoenas as far in advance of hearing as is practical with a goal of no later than *3 weeks prior to the hearing date*. If there are issues about the subpoenas, the parties should meet and confer to attempt to resolve those issues. Parties should notify the Judge as soon as possible of subpoena issues they are unable to resolve. The parties should discuss producing subpoenaed documents prior to the hearing.
- The parties should discuss and agree, to the extent possible, on joint exhibits and factual stipulations to expedite matters. If there are exhibits for which one party refuses to include in the joint exhibits but has no viable objections to its relevancy or authenticity, please consider not objecting to the moving party submitting those documents into the record at the outset of the hearing at the same time the joint exhibits are received. To the extent possible prior to the hearing all joint exhibits should be compiled into one file and each party's separate exhibits should each be compiled into one pdf file and labeled and bookmarked as discussed below.

General Guidelines

- The court reporter is the only person authorized to record the hearing. Any recording by a party or other person of a without the permission of the Judge is prohibited. All participants are deemed to consent to recording.
- Each witness will be administered an oath before testifying. After administering the oath, the witness will be asked if anyone is with them or communicating with them while testifying; and what, if any, materials are in front of them (electronically or otherwise). The witness will be told to put away those materials until directed to review them.
- Participants must speak one at a time and pause prior to speaking in case there is any audio/video lag. Counsel should wait for a witness to finish their answer, and the witness should wait for counsel to finish their question, before speaking. Please wait a few seconds before responding to ensure the speaker is finish. This lag may feel unnatural but is necessary to not talk over each other.

Please emphasize this lag time with your witnesses and that they are to stop speaking anytime they hear the word "objection." If there is an objection, the witness must stop and wait for instruction from the Judge.

Party Exhibits

- Exhibits should be pre-marked by Exhibit No. (e.g., "GC Exh. __," "CP Exh. __," or "R. Exh. ____"). All exhibits should be saved in one pdf file and book marked and labeled with the Exhibit No. for each exhibit.
- If an exhibit is multiple pages and not otherwise paginated, the exhibit must be legibly paginated (e.g., "Page ____ of ____").
- It is highly recommended that witnesses receive copies of all exhibits they will be asked to testify about prior to testifying, except for documents used to refresh recollection or impeach.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

U.S. SILICA COMPANY,

and

Case 25-CA-240736
25-CA-245999

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO,

**ORDER REQUIRING THE OCTOBER 27, 2020, HEARING IN THIS MATTER
TO BE CONDUCTED BY VIDEOCONFERENCE**

Pursuant to a July 17, 2020, Amended Complaint and Notice of Hearing issued by Patricia Nachand, Regional Director of Region 25 of the National Labor Relations Board, the hearing in these matters is currently scheduled to begin at 9:00 a.m. on October 27, 2020, “in a manner (video conference) or location to be determined at a later time.” I hereby order that, pursuant to Section 102.35(c) of the *Board’s Rules & Regulations*, and due to the “compelling circumstances” created by the current COVID-19 pandemic, that the hearing will be conducted remotely via video using Zoom Government technology. See *Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020). Therefore, the hearing will commence at **9:00 a.m. (Central) on October 27, 2020** using Zoom Government, and will continue on consecutive days until concluded. The General Counsel shall notify the court reporter of the Zoom hearing if such notification has not already been made.

While I have briefly discussed the parameters of a videoconference hearing with the parties, attached are the procedural guidelines and witness instructions for conducting the hearing using Zoom. (See Attachments A and B.) I will disseminate a separate pdf document containing access information for the hearing as is discussed in the attachments.

IT IS SO ORDERED.

Dated at Washington D.C. October 7, 2020

/s/ Melissa M. Olivero

MELISSA M. OLIVERO
ADMINISTRATIVE LAW JUDGE

ATTACHMENT A

PROCEDURAL GUIDELINES FOR VIDEO HEARINGS

TECHNOLOGY:

Requirements

All participants (i.e., attorneys, representatives, and witnesses) must use a: (1) a computer, laptop, tablet, or smartphone able to run the “Zoom” videoconferencing platform; (2) a connected webcam/camera and a microphone; and (3) a reliable, high-speed internet connection. Smartphones and tablets only may be used with a headset or earbuds with a microphone, and the device must remain stationary during testimony. A computer or laptop with audio/video capability is highly recommended. A second option is to use a smart phone or tablet to access the video-hearing and a second electronic device to view documents, if possible.

It is recommended that participants have a Zoom (free) account tied to the email address they provide to counsel so their profile, with their first and last name, appears when they join the video hearing.

Test your connection and setup prior to the hearing at <https://zoom.us/test>

The following are links to resources to familiarize yourself with the Zoom:

General Overview

<https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-Tutorials>

Join a Meeting:

<https://support.zoom.us/hc/en-us/articles/201362193>

Testing Audio and Video:

<https://support.zoom.us/hc/en-us/articles/201362283-Testing-computer-or-device-audio>

Audio Echo (Feedback):

<https://support.zoom.us/hc/en-us/articles/202050538-Audio-Echo-In-A-Meeting>

Sharing a Screen/Document through Zoom:

<https://support.zoom.us/hc/en-us/articles/201362633-How-Do-I-Start-A-Screen-Share-Meeting->

Using Virtual Backgrounds link below; sample backgrounds [option 1](#) & [option 2](#):

https://support.zoom.us/hc/en-us/articles/210707503-Virtual-Background#h_bebf36a4-c1e9-4769-9d3c-e0d01457d341 [Note: For security reasons, witness will not be allowed to use virtual backgrounds.]

Counsel must ensure their witnesses have or have access to the equipment, internet access, and training necessary to fully participate in the Zoom video hearing.

The ALJ or courtroom deputy will provide counsel with a link and information and password to access the Zoom video hearing. Counsel will provide that information only to representatives of the parties and their witnesses in advance of the hearing. Others may join the call as spectators by contacting the Regional Office and supplying their name, email address, and telephone number. Regional Offices maintain lists of individuals that have been barred from proceedings due to past abusive conduct and are best equipped to raise concerns about whether a spectator should be granted access.

The ALJ will disseminate a separate pdf document containing access information for the parties to forward to witnesses and for the General Counsel to provide to the Region. Do not directly forward this email to other individuals, because it contains the ALJ's and others' contact information. Save the pdf and attach it to a new email before sending it. This method should preserve the hyperlinks allowing easier access.

No later than **10:00 am (Central) on Monday, October 26, 2020**, all counsel must email the courtroom deputy a list of all hearing participants and a list of anticipated non-participants to which they have sent the access information. These lists are for procedural use only and will not be part of the record. They must include the individual's name, email address, telephone number and role in the proceeding (e.g. co-counsel who will question witnesses, co-counsel not expected to question witnesses, representative, representative who is also a witness, witness, spectator). The lists are necessary for the courtroom deputy to allow appropriate access to the proceeding and correctly assign individuals to breakout rooms or the waiting room.

The parties will not be precluded from calling witnesses who are not on either list, if necessary, for the presentation of their case. However, counsel are reminded of the potential ramifications if it is subsequently determined that the sequestration order was violated. Accordingly, identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

Setting-Up Equipment and Area

- Set up your computer, laptop, or tablet in a well-lit, quiet room with a non-distracting background and with the strongest light source in front of you.
- Station camera at or slightly above eye level (the witness's face and what is in front of them should be visible) and speak directly at the camera, not at the screen. The Judge may ask the witness to move the camera to show their surroundings.
- Headsets or earphones with built-in microphones may help reduce background noise.
- Avoid running unnecessary applications besides Zoom to conserve processing power and networking.
- Mute sounds from all other applications (e.g., email notifications, chat messaging, etc.).
- Plug computer, laptop, tablet or phone into a good power source while at the hearing.
- If possible, avoid sharing your internet/Wi-Fi service with others during the hearing.
- Dress the same way you would dress for in-person appearance.

PROCEDURAL MATTERS:

Subpoenaed Documents and Joint Exhibits

- Parties should serve subpoenas as far in advance of hearing as is practical with a goal of *no later than 3 weeks prior to the hearing date*. If there are issues about the subpoenas, the parties should meet and confer to attempt to resolve those issues. Parties should

notify the Judge as soon as possible of subpoena issues they are unable to resolve. The parties should discuss producing subpoenaed documents prior to the hearing.

- The parties should discuss and agree, to the extent possible, on joint exhibits and factual stipulations to expedite matters. If there are exhibits for which one party refuses to include in the joint exhibits but has no viable objections to its relevancy or authenticity, please consider not objecting to the moving party submitting those documents into the record at the outset of the hearing at the same time the joint exhibits are received. To the extent possible prior to the hearing all joint exhibits should be compiled into one file and each party's separate exhibits should each be compiled into one pdf file and labeled and bookmarked as discussed below.
- It would greatly facilitate the conduct of the hearing if the parties emailed all their potential exhibits to the courtroom deputy no later than **10:00 am (Central) on Monday, October 26, 2020**. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the complaint may be witnesses. Therefore, the parties are requested to provide any exhibits they plan to use with such witnesses to opposing counsel in advance-with the exception of *Jencks* materials.
- All confidential personal identifying information such as Social Security Numbers, birth dates, home address, personal email address, personal phone number, etc. must be redacted from the exhibits.
- Confidential documents, such as medical records and *Jencks* statements, will be shared at the appropriate time during hearing and in an appropriate format to ensure that they are shared with only those who need to see them. Because appropriate safeguards may vary depending on the circumstances, a method will be decided upon after listening to parties' capabilities and concerns. Some possible methods for accomplishing this are:
 - emailed to the necessary party for use while needed and with assurances on the record (and/or in a written affirmation) that all electronic copies are deleted from all mailboxes, files, and trash bins/folders and all paper copies are shredded or will be returned by mail.
 - shared with necessary individuals via "screen share" in a breakout room—prevents public viewing of the document.
 - delivered in sealed envelope to be open while on video conference with a return envelope for the document(s) to be sealed in while still on video camera.

GENERAL GUIDELINES:

- The court reporter is the only person authorized to record the hearing. Any recording by a party or other person is prohibited. Violation of this rule or causing disruptions may result in removal and other sanctions. All participants are deemed to consent to recording.
- Each witness will be administered an oath before testifying. After administering the oath, the witness will be asked if anyone is with them or communicating with them while testifying; and what, if any, materials are in front of them (electronically or otherwise). The witness will be told to put away those materials until directed to review them.
- Participants must speak one at a time and pause prior to speaking in case there is any audio/video lag. Counsel should wait for a witness to finish their answer, and the witness

should wait for counsel to finish their question, before speaking. Please wait a few seconds before responding to ensure the speaker is finished. This lag may feel unnatural but is necessary to not talk over each other. Please emphasize this lag time with your witnesses and that they are to stop speaking anytime they hear the word “objection.” If there is an objection, the witness must stop and wait for instruction from the Judge.

- If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room. The Judge or his co-host will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

USE OF A COURTROOM DEPUTY:

The courtroom deputy for this hearing is Rebecca Johnston, who is an Assistant Solicitor at the Board’s Headquarters in Washington, D.C. She will be assisting with Zoom technical issues throughout the hearing. Ms. Johnston has been screened from working on this case is it comes before the Board. Exhibits and witness lists should be e-mailed to Ms. Johnston at Rebecca.Johnston@nlrb.gov. If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or call Ms. Johnston at 202-273-1066 for assistance. If you cannot reach Ms. Johnston, call the Judges’ Division at 202-501-8800 for assistance.

PARTIES’ EXHIBITS:

- Exhibits should be pre-marked by Exhibit No. (e.g., Jt. Exh. ___, “GC Exh. ___, “CP Exh. ___,” or “R. Exh. ____”). All exhibits should be saved in one pdf file, bookmarked, and labeled with the exhibit number for each exhibit.
- Again, all confidential personal identifying information such as Social Security Numbers, birth dates, home address, personal email address, personal phone number, etc. must be redacted from the exhibits.
- If an exhibit is multiple pages and not otherwise paginated, the exhibit must be legibly paginated.
- It is highly recommended that witnesses receive copies of all exhibits they will be asked to testify about prior to testifying.
- The parties should provide subpoenaed documents to the courtroom deputy in advance of the hearing, as detailed above.

ATTACHMENT B

WITNESS INSTRUCTIONS AND GUIDELINES FOR VIDEO HEARINGS

You are receiving these instructions because you may be appearing as a witness in a National Labor Relations Board hearing. Due to the compelling circumstances created by the COVID-19 pandemic, the Administrative Law Judge (“ALJ”) will conduct the hearing using the videoconferencing platform Zoom. The guidelines and instructions for the video hearing are as follows:

Before the Video Hearing

Zoom and Necessary Equipment

You will need a Zoom account. To create a free Zoom account, visit <https://zoom.us>. If you will be using a computer or laptop, you also must download and install Zoom Client. This is done by hovering over the “Resources” tab on the (top right) of the Zoom.us website and selecting “Download Zoom Client.” If you will be using a tablet or smartphone you must download and install Zoom from the App Store. Your Zoom profile must consist of your first and last name. Zoom has several helpful videos and instructions on its website that you may want to review to learn about the technology.

In addition to having Zoom, you must also have access to a reliable internet connection and a device you can use to participate in the hearing by audio and video. We recommend that you use a computer or laptop with a microphone, speaker and a web camera. In the alternative, you may use a smartphone or tablet, but those devices may be less effective if/when you need to receive and review documents. Regardless of the device you use, we recommend using a headset or earphones with a microphone to help reduce feedback and background noise.

Invitation to Video Hearing

One of the attorneys (most likely your attorney or the attorney who has called you to testify as a witness) will provide you with an email copy of the invitation to attend the video hearing. The invitation will contain a link to “Join ZoomGov Meeting” and a “Meeting ID” and “Password” that you can use to participate in the video hearing through Zoom. You (or your attorney) should communicate with the attorney calling you to estimate when you will be needed to testify. Do not share the contents of the invitation with others. If you know someone who would like to attend as a spectator, please discuss it with the attorney who sent you the invitation and be prepared to provide the individual’s name, email address, and telephone number.

Hearing Preparation

Before the hearing, please take the following steps:

1. Set up your computer, laptop, tablet or smartphone in a well-lit and quiet room with no one else present and as far from distractions as possible;

2. If possible, make sure the main light source is from behind your device or facing you;
3. Witnesses are not allowed to use virtual backgrounds;
4. Position the web camera at or slightly above eye level where it is stationary/hands free;
5. Test your equipment and internet connection (www.zoom.us/test);
6. Close out and avoid running unnecessary applications besides Zoom during the hearing;
7. To the extent possible, limit the number of other devices connected to the internet/Wi-Fi service at your location during the hearing;
8. Mute sounds from other applications (e.g., email notifications, chat messaging, etc.); and
9. Plug your device into a good power source.

If you have any issues, please contact your attorney or the attorney calling you as a witness.

Joining the Hearing

1. The attorney who has called you as a witness will notify you (or your attorney) about when to log into Zoom and be available to testify. Because the exact time for your testimony may change, please provide the attorney with multiple ways to contact you (e.g., telephone, cell phone, email), and be on standby to log on to Zoom and testify on short notice.
2. Please join the video hearing at least 5 minutes before the time you are asked to testify. You can join the hearing by clicking the “Join ZoomGov Meeting” link in the invitation or clicking “Join a Meeting” in Zoom and entering the “Meeting ID” and “Password.” If you receive a message asking whether to open Zoom in the browser or in the Zoom app, select the Zoom app. Select “Join by Computer Audio,” even if you are connecting via smartphone or tablet.
3. When you join the Zoom hearing, you will first see that you are in a Zoom “Waiting Room.” Please do not disconnect from the Waiting Room. The ALJ will receive a message that you are in the Waiting room, and the ALJ will bring you into the video hearing when it is your turn to testify.
4. The video hearing is an official court proceeding. Please approach the hearing with the same level of respect that you would approach an in-person proceeding in a courthouse, and accordingly wear appropriate clothing and use appropriate language.
5. Your video will be and should be on when you join the video hearing. If your audio is on “Mute,” as indicated by a microphone symbol with a slash mark at the bottom of your device screen, then no one will be able to hear you when you speak during the video conference. You may “Unmute” yourself by clicking on the microphone symbol one time, which will remove the slash mark on the microphone symbol and allow everyone to hear when you testify.

During the Hearing

1. Participants, witnesses and observers may NOT record, duplicate, or save or photograph any audio, video or image of any part of the proceeding, including conferences or breakout room discussions. The court reporter is the only person authorized to record the hearing.
2. Do not use a virtual background during the Zoom hearing.
3. Please do not talk over another person. Pause before speaking to avoid having more than one person speaking at the same time (e.g., due to a lag in the audio/video). Please wait for the attorney to finish the question before starting your answer. If you hear an attorney object (e.g. say the word “objection”), please stop speaking immediately and wait for instruction from the ALJ.
4. While testifying, you may not communicate with anyone else about your testimony (including during breaks), and you may not review any documents, devices, or other items unless the attorney or ALJ asks you to do so as part of a question they pose during your testimony. You may be asked to use your camera to show your surroundings prior to or while testifying.
5. During the trial, the attorneys may ask you to look at an exhibit. They may show you the document on your device screen or send you the document electronically. Please make sure you have provided an email address that you can access during the hearing. You should answer any questions about the exhibit, and then put the exhibit aside once the attorney moves on to another line of questions.
5. At the end of your testimony, the ALJ will give you some final instructions and will likely instruct you not to tell any other possible witnesses about your testimony. The ALJ will then advise you when to disconnect from the Zoom video hearing.
6. One of the attorneys will contact you if you need to appear.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

U.S. SILICA COMPANY,

and

Case 25-CA-240736
25-CA-245999

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO,

**AFFIDAVIT OF SERVICE OF: ORDER REQUIRING THE OCTOBER 27, 2020,
HEARING IN THIS MATTER TO BE CONDUCTED BY VIDEOCONFERENCE**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **October 7, 2020**, I served the above-entitled document(s) by **electronic mail** upon the following persons, addressed to them at the following addresses:

Ashley Miller, Esq.
Counsel for the General Counsel
National Labor Relations Board
Subregion 33
101 SW Adams Street
Suite 400
Peoria, IL 61602
Email: Ashley.Miller@nrlb.gov

Jeremy Moritz, Esq.
Jean Kosela, Esq.
Counsel for Respondent
Ogletree Deakins
155 N. Wacker Drive
Suite 4300
Chicago, IL 60606
Email: jeremy.moritz@ogletree.com
Email: jean.kosela@ogletree.com

Steven Davidson, Esq.
Counsel for Charging Party
Legal Department
International Union of Operating
Engineers, Local 150, AFL-CIO
6140 Joliet Road
Countryside, IL 60525-3956
Email: sdavidson@local150.org

October 7, 2020

Date

Rechona Jenkins, Designated Agent of
NLRB

Name

/s/ Rechona Jenkins

Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES, SAN FRANCISCO OFFICE**

NP RED ROCK LLC d/b/a
RED ROCK CASINO RESORT SPA

and

Cases 28-CA-244484
28-CA-250950

CLAUDIA MONTANO, an Individual

and

Cases 28-CA-250229
28-CA-250282
28-CA-250873
28-CA-252591
28-CA-253276
28-CA-254470
28-CA-254510
28-CA-254514
28-CA-260640
28-CA-260641

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS
a/w UNITE HERE INTERNATIONAL UNION

NP BOULDER LLC d/b/a
BOULDER STATION HOTEL & CASINO

and

Case 28-CA-254155

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS
a/w UNITE HERE INTERNATIONAL UNION

NP PALACE LLC d/b/a
PALACE STATION HOTEL & CASINO

and

Case 28-CA-254162

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS
a/w UNITE HERE INTERNATIONAL UNION

ORDER DIRECTING REMOTE ZOOM HEARING

The hearing in this consolidated proceeding is scheduled to begin on October 27, 2020. Currently at issue is whether the hearing should be conducted in person at a designated physical location in Las Vegas, where the Respondent Companies' facilities are located and the alleged events took place, or remotely via the Agency's Zoom for Government platform due to the COVID-19 pandemic.

At the initial prehearing conference on September 25, the Respondents stated that they favored the former, while the General Counsel and the Charging Party Union stated that they

avored the latter. The Respondents, the General Counsel, and the Union also subsequently filed written statements supporting their respective positions on September 30.

After carefully considering the parties' positions and arguments, I have concluded that the hearing should be opened and conducted remotely via Zoom, at least during the General Counsel's and the Charging Parties' cases-in-chief. The COVID-19 pandemic clearly constitutes good cause in compelling circumstances for conducting hearings remotely. *XPO Cartage, LLC*, 370 NLRB No. 10, slip op. at 1 (Aug. 20, 2020); and *William Beaumont Hospital*, 370 NLRB No. 9, slip op. at 1–2 (Aug. 13, 2020).¹ See also *Flores v. Town of Islip*, 2020 WL 5211052 (E.D. N.Y. Sept. 1, 2020); and *Gould Electronics Inc. v. Livingston County Road Comm.*, --- F.Supp.3d ---, 2020 WL 3717792, *4 (E.D. Mich. June 30, 2020). According to published reports by the Southern Nevada Health District, while the number of COVID-19 cases, hospitalizations, and deaths in the Clark County/Las Vegas area has trended down since mid-July or early August, the numbers have trended down before only to rise again dramatically after phased reopenings. See the SNHD Dashboard and Trends reports at <https://www.southernnevadahealthdistrict.org/coronavirus/>.² And Respondents do not dispute that the COVID-19 pandemic currently remains a significant health risk warranting extraordinary safety measures.

Further, none of the objections or concerns raised by the Respondents about holding a remote hearing via Zoom outweigh the risks and difficulties of holding an in-person hearing in these circumstances. For example, Respondents argue, correctly, that the hearing will be neither simple nor short. The August 31 third consolidated alleges numerous Section 8(a)(1), (3), and (5) violations by over 10 supervisors or agents and requests a remedial *Gissel* bargaining order. Moreover, the General Counsel stated at the recent prehearing conference that the Regional Office intends to add certain new 8(a)(3) failure-to-recall allegations to the complaint, and to also consolidate the Union's post-election objections with the unfair labor practice allegations. The parties anticipate that approximately 95 witnesses will be called to testify regarding these consolidated complaint allegations and election objections, 75 for the General Counsel and Union and 20 for the Respondents. The parties also expect to introduce many exhibits, including video and/or audio recordings, through the witnesses. The parties estimate that the hearing may therefore last 30 days or more, 10 times longer than the average unfair labor practice hearing (3 days). And this, in turn, will provide more opportunities for technical and procedural difficulties and delays associated with remote hearings.

However, such a lengthy and witness-heavy hearing also presents substantially more opportunities for infection during an in-person hearing. Further, the mere fact that such circumstances present more opportunities for technical or procedural problems during a remote hearing does not mean they cannot be mostly avoided or efficiently resolved when they occur by carefully reviewing and following the Zoom hearing instructions and protocols (which are being

¹ For additional, unpublished Board orders following *William Beaumont* and *XPO Cartage*, see *Oxarc, Inc.*, 19–CA–230472, unpub. Board order issued Sept. 23, 2020 (2020 WL 5735979); *Pipefitters Local 675 (RPS Mechanical, Inc.)*, 20–CB–251372, unpub. Board order issued September 4, 2020 (2020 WL 5353969); and *Boeing Co.*, 10–CA–204795, unpub. Board order issued August 31, 2020 (2020 WL 5204848).

² I have taken judicial notice of the SNHD reports.

separately provided to all parties this same day along with the Zoom hearing invitation and access information). If the respondents have any questions about those instructions and protocols or using the Zoom platform, they may raise them at future prehearing conferences. A courtroom deputy provided by the Board will also be available to remotely assist them if the parties experience any difficulties following those instructions and protocols or utilizing the Zoom platform during the hearing. This may include, among other things, providing guidance or assistance in electronically sharing documents and exhibits—including audio and video recordings—with other parties and witnesses using email, the Agency’s Sharepoint site, and/or the Zoom share-screen tool (each of which is more fully discussed in the Zoom hearing instructions and protocols). Thus, Respondents’ concerns about potential technical and procedural problems do not outweigh the compelling health reasons for holding the hearing remotely. See *XPO Cartage, LLC*, above, slip op. at 1–2. See also *Flores v. Town of Islip*, above, at *3.

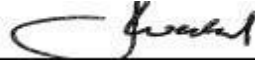
Respondents also assert that there is an available brick-and-mortar alternative to a Zoom hearing that will satisfy any health concerns about an in-person hearing; specifically, the Summerlin Ball Room Section A in Respondent Red Rock Resort’s facility, which was used for the December 2019 (pre-pandemic) secret ballot election. Respondents assert that the space is large enough to maintain recommended social distancing; that state-of-the-art thermal scanners will be installed to monitor all hearing participants and witnesses; that all participants and witnesses will be required to wear appropriate PPE, which will be made available if needed; and that touch-free hand sanitizing stations will be installed and enhanced cleaning technology such as electrostatic sprayers and hospital-grade disinfectants will be used more frequently throughout the area. Respondents also assert that there are adjacent rooms to safely accommodate sequestered witnesses, legal counsel and other activities as needed, and that there are also nearby bathrooms and an attached parking garage for easy access. (R. Br. 3–4.)

However, the Union strongly objects to holding the hearing at the Respondent’s facility. The Union argues that doing so would be inappropriate given the Respondent’s numerous and serious alleged unfair labor practices, including threats against employees, and “would risk conflating the Employer’s authority with the Board’s.” (U. Br. 2–3.) The Union’s argument appears to have at least historical support. It would be highly unusual, and probably unprecedented, to hold an unfair labor practice hearing at a respondent’s facility, particularly over a charging party’s objection. As indicated in the Agency’s ULP Casehandling Manual, Sec. 10256.4, hearings are normally held at the NLRB Regional Offices, at Federal, State, or municipal courtrooms, or, if none of these is available, at another “properly equipped and maintained” facility that will “contribut[e] to the formality and dignity of the proceedings.” Further, in my experience, while alternative non-court hearing sites selected by the Regional Offices have had varying degrees of formality and dignity, they have always been neutral sites unconnected to a respondent or charging party.

Moreover, as indicated by the General Counsel, there is also a travel risk involved in holding an in-person hearing. See GC Br. 2 (“An in-person hearing would require the ALJ, counsel from each party, and likely some witnesses to travel to Las Vegas, Nevada on multiple occasions in light of the expected duration of the hearing. Additionally, those individuals would have to stay for extended periods of time in hotels while also relying on restaurants for meals.”).

Accordingly, Respondents proposed alternative is rejected. As indicated above, however, Respondents are not foreclosed from renewing their request upon the completion of the General Counsel's and the Charging Parties' cases-in-chief if Respondents can show that a more suitable, safe and neutral location is available and that Respondents could not adequately present their case remotely using the Zoom platform.³

Dated, San Francisco, California, October 1, 2020



Jeffrey D. Wedekind
Administrative Law Judge

Served by email on the following:

Sara Demirok, Esq.	sarah.demirok@nlrb.gov
Kyler Scheid, Esq.	kyler.scheid@nlrb.gov
Reyburn Lominack III, Esq.	rlominack@fisherphillips.com
Michael Carrouth, Esq.	mcarrouth@fisherphillips.com
David Dornack, Esq.	ddornak@fisherphillips.com
Kimberly Weber, Esq.	kweber@msh.law
Richard Treadwell, Esq.	rtreadwell@msh.law

³ If any party objects to any part of this order, it may file a request for special appeal with the Board. The request must be filed "in writing promptly and within such time as not to delay the proceeding." Sec. 102.26 of the Board's Rules. See also *Hampton Roads Shipping Assoc.*, 5–CA–176015, unpub. Board order issued March 13, 2018 (2018 WL 1325100). The parties should not assume the hearing will be postponed pending the Board's ruling on the special appeal. See, e.g., *Custom Excavating, Inc.*, 228 NLRB 285, 286 (1977).

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES, SAN FRANCISCO OFFICE**

NP RED ROCK LLC d/b/a
RED ROCK CASINO RESORT SPA

and

Cases 28-CA-244484
28-CA-250950

CLAUDIA MONTANO, an Individual

and

Cases 28-CA-250229
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28-CA-253276
28-CA-254470
28-CA-254510
28-CA-254514
28-CA-260640
28-CA-260641

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS
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NP BOULDER LLC d/b/a
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and

Case 28-CA-254155

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS
a/w UNITE HERE INTERNATIONAL UNION

NP PALACE LLC d/b/a
PALACE STATION HOTEL & CASINO

and

Case 28-CA-254162

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS
a/w UNITE HERE INTERNATIONAL UNION

**ZOOM HEARING INVITATION
WITH INSTRUCTIONS AND PROTOCOLS**

The hearing in this consolidated proceeding is scheduled to begin via Zoom on October 27, 2020. Set forth below are: (1) the access links and numbers necessary for all identified participants (counsel and party representatives, assistants, and witnesses, and the court reporter and any interpreters) and observers to join the Zoom hearing each day; and (2) detailed instructions and protocols for joining and participating in or observing the Zoom hearing. *Read and follow them carefully.*

I. PARTICIPANTS

A. Zoom Access Links and Numbers

You may join the Zoom hearing with a computer or laptop by clicking on the “Join ZoomGov Meeting” link below. Alternatively, if you are using a mobile smart phone or tablet, you can click “Join a Meeting” in your Zoom app and enter the meeting ID and password.

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1605018040?pwd=aThJTjdjeW9DVm00RHl4VHJ3OEVRQT09>

Meeting ID: 160 501 8040

Passcode: 717739

If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the hearing than the browser.

When you enter, select “Join by Computer Audio” even if you are connecting via a smart phone. You will be automatically placed in the Zoom waiting room until admitted to the hearing.

If you are unable to join the hearing online or wish to use your phone for audio you may join the hearing by calling the appropriate phone number below and entering the meeting ID and password when prompted.

Dial by your location

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

833 568 8864 US Toll-free

Meeting ID: 160 501 8040

Passcode: 717739

This will allow you to communicate with the judge and other participants and obtain assistance if needed to join the hearing via the internet.

If you cannot join the hearing by any of these methods, immediately contact one of the other participants directly by email or phone for assistance.

B. Instructions and Protocols for the Zoom hearing.

Audio/Video equipment required. You must have access to a computer, laptop or other device that can transmit and receive audio and video. Both a primary and a secondary device is recommended.

Primary device: A computer or laptop is strongly recommended as your primary device. It will provide more functionality and is best for sending and receiving documents.

Secondary device: A mobile smart phone or tablet is recommended as a secondary or backup device to maintain communication if technical problems occur during the hearing. For example, if there are audio problems with your computer, you could use it solely for video (by clicking “Leave computer audio” in the Zoom audio settings), and call in with your phone for audio.

Zoom account required. If you do not have a Zoom account, you must create one; it is free. If using a computer or laptop to join the hearing, go to Zoom’s website at www.zoom.us, place your cursor over the “Resources” tab in the upper right of the home screen, and select “Download Zoom Client” from the drop-down box. If using a smart phone or tablet, go to the App Store and download the free Zoom app.

Internet connection required. You must have access to a strong and stable internet connection—either wired/ethernet cable (recommended) or wireless/WiFi.

Preparing for the hearing. Take the following steps at least 30 minutes before joining the Zoom hearing:

- 1) *Location.* Set up your computer, laptop, or other primary device in a quiet room or space where you will not be distracted or interrupted.
- 2) *Background.* Make sure there are no uncovered windows or distracting images or messages directly behind you. Virtual backgrounds should also be free of distracting images or messages. Witnesses may not use virtual backgrounds.
- 3) *Power source.* Connect your primary and secondary devices to electrical outlets or portable power sources to ensure they will not run out of battery.
- 4) *Internet.* Test your internet connection. Close any unnecessary applications on your primary device other than Zoom. If using wifi, disconnect other devices, including your secondary device (unless or until needed), from the same wifi network.
- 5) *Camera.* Position the web camera so that it is facing you at or slightly above eye level.
- 6) *Microphone and speaker.* Make sure the microphone is close enough to pick up your voice. And raise the speaker volume so it is loud enough for you to hear others. If you will be using separate devices for video and audio (e.g., a computer for video and a phone for audio), be sure that the microphone and the speaker on the video device are off to prevent audio feedback.
- 7) *Mobile phone notifications.* Set your mobile phone notifications on vibrate only.

Joining the hearing. Join the Zoom hearing at least 5 minutes before the scheduled time using the access link or numbers listed above. Wait in the Zoom waiting room until you are admitted to the hearing by the judge or the courtroom deputy. Be patient, it may take a few minutes. If there is an unexpected delay, the judge or deputy will send a message to the waiting room, which will appear on the waiting room screen.

Participating in the hearing. An unfair labor practice hearing is an official Government legal proceeding. As such, you are expected to abide by the following protocols:

Decorum and conduct. Observe rules of decorum, civility, and ethics and show respect for the dignity of the legal proceeding by your conduct, language, and attire.

Cooperation and compliance. Cooperate with each other and the court reporter, and comply with the judge's and deputy's reasonable instructions (e.g., to adjust your position, lighting, or web camera, or to mute or unmute your microphone).

No videotaping or recording. No videotaping or audio recording is permitted during any part of the Zoom proceeding, except by the court reporter who is responsible for preparing the official record.

If you fail to abide by these protocols, you may be removed from the Zoom hearing and/or sanctioned under Sec. 102.177 of the NLRB's Rules and Regulations.

Party representatives and assistants.

Forwarding this invitation. This invitation has been emailed to the parties' counsel or representatives of record only. It is your responsibility to forward it to additional party representatives and assistants who will participate in the hearing and ensure that they understand and follow all the Zoom hearing instructions and protocols.

Informing the judge or deputy. You must inform the judge or the deputy of the identity of any additional party representatives and assistants as soon as possible so that they will be admitted from the Zoom waiting room in a timely manner.

Communicating privately during the hearing. If you need to speak privately with other counsel or your party representatives and assistants during the hearing, you may request the judge or deputy to create a private Zoom "breakout room" for this purpose.

Court reporter and interpreter. The NLRB Regional Office is responsible for scheduling a court reporter and forwarding this invitation to him/her. If an interpreter is needed for a witness, the party calling that witness is responsible for scheduling the interpreter, either through the NLRB Regional Office or directly, and forwarding this invitation to him/her. The identity of the court reporter and the interpreter should be emailed to the judge or the deputy before the hearing so that they will be admitted from the Zoom waiting room in a timely manner.

Witnesses. If you will be calling witnesses, you are responsible for the following:

Invitation. Providing your witnesses with this invitation.

Instructions and protocols. Ensuring that your witnesses understand and follow all the Zoom hearing instructions and protocols set forth in the invitation.

When to join hearing. Informing your witnesses when they should join the Zoom hearing and enter the waiting room.

Witness contact information. Obtaining a phone number and/or email address to contact the witness in the event communication is interrupted by internet or other technical problems during the hearing.

Notification to the judge. Informing the judge or the deputy of the identity of your witnesses so they will be admitted from the Zoom waiting room in a timely manner.

Sequestration. Informing your witnesses of their obligations under any sequestration order issued by the judge and bringing any violations of the order to the judge's attention.

Exhibits.

Formatting exhibits. Exhibits must be in the following formats:

PDF for documents
JPG for photographs/images
MP4 for videos

Marking exhibits. Exhibits must be premarked before they are shared and offered at the hearing (e.g., GC Exh. 1, CP Exh. 1, R. Exh. 1). There is no requirement that they be offered at the hearing in the same numerical order (for example, R. Exh. 3 can be offered into evidence before R. Exh. 2).

Paginating exhibits. Exhibits longer than one page must include page or Bates numbers.

Sharing exhibits. With certain exceptions (e.g., Jencks statements and exhibits used to refresh recollection or impeach), the parties are encouraged to distribute as many exhibits as possible to the other parties, the judge, and the witnesses either before the hearing or before each witness testifies. Options for electronically distributing or sharing exhibits before and during the hearing include:

Email (before and during hearing). This is a good way to distribute exhibits, provided they are not too large to send by email. (For Microsoft Outlook file-size limits, see <https://support.microsoft.com/en-us/office/send-large-files-with-outlook-8c698842-b462-4a4c-8d53-5c5dd04f77ef#:~:text=For%20Internet%20email%20account.,size%20limit%20is%2010%20MB.>) However, be aware that it may take several minutes for everyone to receive the email.

NLRB Sharepoint webpage (before and during hearing). This is an option for uploading exhibits that are too large to send by email, such as lengthy audio and video recordings, so that they can be accessed by the participants.

Instructions: Notify the judge or deputy at least 5 business days before the hearing that an NLRB Sharepoint webpage should be created for this purpose and provide the email addresses of those who will need access. Once created, the judge or deputy will email the Sharepoint link and instructions to all parties and the court reporter.

Zoom share-screen function (during hearing). This may be used to share an exhibit, including a videotape, with a witness and other participants during the hearing. For helpful instructions, see <https://support.zoom.us/hc/en-us/articles/201362153-Sharing-your-screen-in-a-meeting>.

Identifying and bookmarking electronically shared exhibits. Exhibits that are emailed or uploaded to Sharepoint should be identified in the same way they are premarked. If combined in a single PDF file, exhibits should be bookmarked in the same manner using the PDF bookmarking function or tool.

Bookmarking instructions: Open a PDF document; left-click on “Tools”; left-click on “Combine files”; and follow the instructions, adding each premarked exhibit in numerical order. When all the exhibits have been added, right-click on the open PDF document; left-click “Add Bookmark” in the popup window; place the cursor at beginning of the first exhibit; left-click the new bookmark icon in the shaded left-side column (the ribbon with a plus sign); and type the exhibit number in the shaded box. Then move the cursor to the beginning of the next exhibit and repeat. When finished, save the bookmarked PDF document.

As indicated above, if sharing exhibits by email, attachment size restrictions may limit the number or type of exhibits that may be combined into a single PDF file. In that event, combine and bookmark as many exhibits as possible in each PDF file and email each PDF file separately to the participants.

Providing exhibits to court reporter. You are responsible for ensuring that your exhibits are provided to the court reporter for inclusion in the official record. The exhibits should be provided by email or uploaded to the NLRB Sharepoint webpage for retrieval no later than the end of the same day they are offered and admitted or the beginning of the next hearing day.

Redacting sensitive personal identifying information (SPII). Redact any SPII, including social security numbers, driver’s license numbers, and credit card and financial account numbers, from exhibits.

Technical problems. Technical problems (internet, audio, or video delays or interruptions) may occur during the hearing. They usually cause only short delays provided the proper steps are taken.

Follow the instructions and protocols. Follow the instructions and protocols above by using a strong and reliable internet connection, having a secondary or backup device to access or communicate with the Zoom hearing or participants if necessary, and emailing your alternative contact information to the judge, deputy, and/or other participants prior to the hearing. (This information should not be shared orally during the Zoom hearing if it is considered private.)

Mute your microphone if not speaking or actively participating. This will help to prevent others from hearing your audio feedback or background noise on their devices.

Notify the judge or deputy. Immediately notify the judge or deputy if your audio and/or video feed is delayed or otherwise not working properly. You may do so either orally or by signaling with your hands that you are having a problem. The judge or deputy will try to communicate with and assist you by using the Zoom chat function or by contacting you on your secondary or backup device.

Reboot your computer. Often technical problems can be fixed by rebooting your computer or laptop and then re-accessing the Zoom hearing with the same link and numbers. If possible, advise the judge, deputy, and/or other participants that you will be doing this before leaving the hearing, or as soon as possible thereafter by phone or email if you have already been disconnected from the hearing. You will be re-admitted to the hearing when the judge or deputy sees that you have re-entered the Zoom waiting room.

II. OBSERVERS

A. Zoom Hearing Access by Observers

Obtaining the Zoom hearing access information. Nonparticipating employees, members, associates, or agents of a party or counsel of record may request a copy of this invitation from any of the parties or counsel or the NLRB Regional Office.

The general public and the media must request the invitation from the NLRB Regional Office. The Regional Office's contact information may be found on the NLRB's website at www.nlr.gov/about-nlr/who-we-are/regional-offices.

Providing identifying information. For security reasons, every observer must provide his/her identifying information—including full name (which must match the Zoom name), email address, and telephone number—to the party, counsel, or NLRB Regional Office that is requested to forward the invitation.

Forwarding the invitation. Unless there is reason to doubt the accuracy of the identifying information provided by the observer, or he/she is a known security risk, the party, counsel, or NLRB Regional Office receiving the request should forward the invitation to the observer's email address.

Notifying the judge or deputy. Any party, counsel, or NLRB Regional Office that forwarded the invitation to one or more observers should email a list of those observers with their identifying information to the judge or the deputy at least 24 hours before the hearing.

No one will be admitted to the Zoom hearing from the waiting room unless his/her identifying information has been provided to the judge or the deputy by a party, counsel, or the NLRB Regional Office.

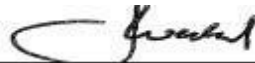
B. Instructions and Protocols for Observing the Zoom hearing

Joining the hearing. Observers may join the Zoom hearing in the same manner and with the same access link or numbers as participants. Like the participants, they will be placed in the Zoom waiting room until they are admitted to the hearing by the judge or deputy. It may take 15–20 minutes or more, depending on the number of participants (who will be admitted first) and observers, and any technical or other preliminary issues that need to be addressed. If there will be an extended delay, the judge or deputy will send a message to the waiting room, which will appear on the waiting room screen.

Video and audio output. Observers must have their video and audio output off at all times, both when they join and are admitted from the waiting room and thereafter throughout the hearing. They may not turn on their video or audio output at any time or share messages or images of any kind.

Violators may be removed and reported to Zoom and appropriate federal authorities for further sanctions.

Dated, San Francisco, California, October 1, 2020



Jeffrey D. Wedekind
Administrative Law Judge

Served by email on the following:

Sara Demirok, Esq.	sarah.demirok@nlrb.gov
Kyler Scheid, Esq.	kyler.scheid@nlrb.gov
Reyburn Lominack III, Esq.	rlominack@fisherphillips.com
Michael Carrouth, Esq.	mcarrouth@fisherphillips.com
David Dornack, Esq.	ddornak@fisherphillips.com
Kimberly Weber, Esq.	kweber@msh.law
Richard Treadwell, Esq.	rtreadwell@msh.law

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES**

UNITED STATES POSTAL SERVICE

and

Case 28-CA-249674

**NATIONAL ASSOCIATION OF LETTER
CARRIERS BRANCH 6156**

ORDER TO HOLD HEARING BY VIDEO CONFERENCE

On August 11, 2020, the Regional Director for the National Labor Relations Board's (NLRB) Region 28 rescheduled the hearing in this matter and issued an order that the hearing open at 9:00 a.m. Pacific Time on September 29, 2020, at a location and by a means and method to be determined. Because of the continuing risks presented by the COVID-19 coronavirus pandemic, the parties have agreed to conduct the hearing via videoconference. Accordingly, upon the agreement of the parties, and for good cause shown,

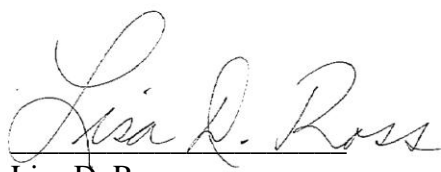
IT IS HEREBY ORDERED that the hearing in this matter will open via videoconference, using the Zoom for Government software platform, on Tuesday, September 29, 2020, at 9:00 a.m. Pacific Time. The link to join the hearing, along with the Meeting ID and Passcode, will be issued in a separate order.

As discussed with the parties on September 2, 2020, I will hold a follow-up prehearing conference via Zoom to address any outstanding prehearing matters, discuss settlement, and permit the parties to familiarize themselves with the platform. That prehearing conference will be held on **Wednesday, September 16, 2020, at 10:00 a.m. Pacific Time.**

IMPORTANT: Recording a Board proceeding held by video or teleconference, including "screen-shots" or other audio or visual copying of a hearing, is absolutely prohibited. Violations of these prohibitions may result in sanctions, including removal from the proceeding, restricted entry or denial of entry for future hearings, or any other sanctions deemed necessary by the presiding judge or the Board.

SO ORDERED

Dated: San Francisco, CA
September 2, 2020

A handwritten signature in cursive script, reading "Lisa D. Ross", written in dark ink.

Lisa D. Ross
Administrative Law Judge

* * * * *

USPS, 28-CA-249674

Join the prehearing video conference via ZoomGov at the following link:

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1601951493?pwd=SlE4dHVwRjBtcVFRRSt6dGJIQU81Zz09>

Meeting ID: 160 195 1493

Passcode: 135917

One tap mobile

+16692545252,,1601951493#,,,,,0#,,135917# US (San Jose)

+16468287666,,1601951493#,,,,,0#,,135917# US (New York)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

833 568 8864 US Toll-free

Meeting ID: 160 195 1493

Passcode: 135917

Find your local number: <https://www.zoomgov.com/u/ac771KvJD0>

Join by SIP

1601951493@sip.zoomgov.com

Join by H.323

161.199.138.10 (US West)

161.199.136.10 (US East)

Meeting ID: 160 195 1493

Passcode: 135917

Join by Skype for Business

<https://www.zoomgov.com/skype/1601951493>

Service via email to:

For the General Counsel:

Sara Demirok, Esq.

NLRB Region 28

Sara.Demirok@nrlrb.gov

For the Respondent:

Dallas Kingsbury, Esq.

Dallas.G.Kingsbury@usps.gov

INSTRUCTIONS FOR CONDUCTING A VIDEO HEARING

Due to the compelling circumstances created by the COVID-19 pandemic, the Administrative Law Judge (“ALJ”) will conduct the hearing in this matter using the videoconferencing platform Zoom for Government. The following instructions are for the attorneys and/or representatives conducting the video hearing, which the ALJ may amend or modify. There are separate instructions for witnesses participating in the video hearing. Please provide those instructions to your witnesses well in advance of the hearing.

Before the Video Hearing

Zoom and Necessary Equipment

All participants will need a Zoom account. To create a free Zoom account, visit <https://zoom.us>. If you will be using a computer or laptop, you also must download and install Zoom Client. This is done by hovering over the “Resources” tab on the top right of the Zoom.us website and selecting “Download Zoom Client.” If you will be using a tablet or smartphone you must download and install Zoom from the App Store. Your Zoom profile must consist solely of your first and last name.

In addition to having Zoom, you must also have access to (1) a strong, stable, and secure internet connection, and (2) a device you can use to participate in the Zoom hearing by both audio *and* video. The device must allow you to send, receive and review electronic documents in accordance with the instructions set forth below. You are strongly recommended to use a computer or laptop with a microphone, a speaker, and a web camera. In the alternative, you may use a smartphone or tablet, but you likely will need a second device to handle documents while remaining visible during the hearing. Regardless of the device(s) you use, we recommend using a headset or earphones with a microphone to help reduce feedback and background noise.

You are responsible for ensuring your witnesses have the equipment and internet access necessary to participate by video and audio in the hearing. Any issues must be brought to the ALJ’s attention as soon as possible.

It is highly recommended that you practice using Zoom with your witnesses before the hearing, particularly with the handling of exhibits.

Invitation to Video Hearing

Approximately a week before the hearing, the ALJ will provide you with an email invitation to attend the video hearing. The invitation will contain a link to “Join ZoomGov Meeting” and a “Meeting ID” and “Password” that you can use to participate in the video hearing. Do not share or forward the email invitation. Attached to the email invitation will be a PDF document for your participants and witnesses on how to access the video hearing.

For security reasons, only identified participants and non-participants will be admitted into the video hearing. Each party must provide the ALJ, *and only the ALJ*, with a list of its intended participants (i.e., attorneys, paralegals, representatives, and witnesses), including their name, Zoom profile name, email address, telephone number, and expected role in the hearing, 48 hours before the scheduled start of the hearing. Each party may supplement or revise their participant list during the hearing.

Non-participants seeking to observe the video hearing must contact the Regional Office and provide their full name, Zoom profile name, email address, and telephone number 48 hours before the scheduled start of the hearing, and the Regional Office will provide them with how to access the video hearing. The Regional Office will provide the ALJ with a list of the identified non-participants at least 24 hours before the scheduled start of the hearing.

Non-participants must remain muted with their video output off during the hearing. They may not disrupt the hearing in any way. If a non-participant disrupts the hearing, or violates the ALJ’s rules, they may be subject to removal and other sanctions.

Hearing Preparation

Before the hearing, please take the following steps:

1. Set up the device(s) you will be using for the hearing in a well-lit and quiet room with no distractions;
2. Make sure the device remains steady and position the web camera at or slightly above eye level;
3. Test your equipment and internet connection (<http://zoom.us/test>) HAVE A BACKUP PLAN!
4. Close out and avoid running unnecessary applications besides Zoom during the hearing;
5. To the extent possible, limit the other devices connected to the internet/wifi service during the hearing;
6. Mute sounds from other applications (e.g., email notifications, chat messaging, etc.); and
7. Plug your device into a good power source.

Joining the Hearing

Join the video hearing at least 5 minutes before the time you are asked to testify. You can join by clicking the “Join ZoomGov Meeting” link in the invitation or clicking “Join a Meeting” in Zoom and entering the “Meeting ID” and “Password.” If you receive a message asking whether to open Zoom in the browser or in the Zoom app, select the Zoom app. Select “Join by Computer Audio,” even if you are connecting via smartphone or tablet.

When you join the Zoom hearing, you will first see that you are in a Zoom “Waiting Room.” Do not disconnect from the Waiting Room. The ALJ will receive a message that you are in the Waiting Room, and the ALJ will bring you into the video hearing.

The video hearing is an official court proceeding. Approach it with the same level of respect you would an in-person proceeding in a courthouse. Dress appropriately and use appropriate language.

Your video should be on when you join the video hearing, and it must remain on throughout. If your audio is on “Mute,” as indicated by a microphone symbol with a slash mark at the bottom of your device screen, then no one will be able to hear you when you speak during the hearing. You may “Unmute” yourself by clicking on the microphone symbol one time, which will remove the slash mark on the microphone symbol and allow everyone to hear when you testify. Please mute yourself when you are not speaking.

During the Hearing

The court reporter is the only person authorized to record the hearing. You may not record, duplicate, photograph, or save any audio, video or image from the proceeding, including conferences or sidebars.

Due to a possible lag in the audio or visual connection, make sure to pause before speaking to avoid having multiple people speaking at the same time. Do not talk over another person.

No one may communicate privately with a witness while they are testifying.

If you experience technological issues during the hearing, please notify the ALJ immediately.

Exhibits

You should discuss with the other counsel/representatives and, to the extent possible, agree to joint exhibits and/or factual stipulations on relevant, undisputed matters. The joint exhibits must be marked, converted to one PDF document with bookmarks, and distributed to the parties, the court reporter, and the ALJ in advance of the hearing.

You must pre-mark exhibits. You may save each document as a separate pdf file, or you may create a single pdf file with bookmarks that allow the reader to select each individual exhibit. Please identify each exhibit with initials identifying the party presenting the document and the exhibit number (e.g., “GC Exh. __,” “CP Exh. __,” or “R.

Exh. ____”) and a brief description of the document (e.g., “2017-2020 Collective-Bargaining Agreement”, “November 21, 2019 Warning Issued to John Smith,” or “January 2, 2020 Information Request.”)

You must clearly paginate or (e.g., “Page ____ of ____.”) or Bates Stamp all exhibits.

You must redact all personally identifying information other than names (e.g., social security number, date of birth, address, telephone number, etc.) BEFORE proffering a document or sharing the document on the screen.

It is **STRONGLY** recommended that you email counsel/representatives, the court reporter, the ALJ, and the witness with the exhibits you intend to use *prior to your examination of the witness*, except those that may be used to refresh recollection or impeach.

You may use the “Share Screen” function to show an exhibit to a witness. But before doing so, you must email or otherwise distribute the exhibit to all counsel/representatives, the court reporter, and the ALJ. You may not present an exhibit through the “Chat” function without the ALJ’s permission.

You must confirm the court reporter has each exhibit you proffered into evidence, whether received or rejected.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

NEW YORK PAVING, INC.

and

Case No. 29-CA-254799

CONSTRUCTION COUNCIL LOCAL 175,
UTILITY WORKERS UNION OF AMERICA,
AFL-CIO

**CASE MANAGEMENT ORDER WITH INSTRUCTIONS FOR
VIDEOCONFERENCE HEARING**

On July 27, 2020, I directed that this trial be conducted by video conference on the Zoom for Government platform. The hearing will take place on specific dates in late October and early November, which will be determined in consultation with the parties. This order addresses how trial participants and non-participant observers may access the unfair labor practice trial on Zoom, and provides instructions for how the trial will proceed.

Trial Dates

As discussed above, the hearing will take place on dates in late October and early November. Once specific dates are agreed upon, a separate order will issue containing the complete trial schedule. In general, please bring any additional scheduling issues which arise to my attention as soon as possible.

On the first day of the hearing, we will begin by addressing procedural and preliminary matters, including opening the trial record, introducing the formal papers, resolving any outstanding disputes regarding subpoenas and producing documents, addressing any other pending motions, and opening statements. Counsel for the General Counsel (General Counsel) should then be prepared to begin presenting their first witness if time permits.

Zoom Invitations

Before the trial, I will send the parties a Zoom invitation on Microsoft Outlook, and also send a PDF copy of the invitation. The parties may share the PDF copy of the Zoom invitation with other participants and observers; **please do not share the Outlook version of the invitation, as that version will list my email address.**

If you are unable to join the meeting either online or by phone, please contact one of the other participants in the trial or call our Courtroom Deputy, whose name and telephone number will be provided after an assignment is made, for assistance. If you cannot reach the assigned Courtroom Deputy, please call Ms. Dana Brown at the Division of Judges, New York Branch Office at (212)944-2943 for assistance.

Trial Guidelines

As preliminary resources that may assist with preparing for trial, trial participants (attorneys, representatives and witnesses) may refer to the attached guidelines: Attorney/Representative Instructions and Guidelines for Video Hearings (Exhibit A); and Witness Instructions and Guidelines for Video Hearings (Exhibit B).

Courtroom Deputy

As indicated above, a Courtroom Deputy will be assigned to participate in the trial in this case. The Courtroom Deputy will be available during the trial to assist with managing the trial, handling exhibits, and addressing technical issues with Zoom, should any arise. The Courtroom Deputy will be an attorney from the “Board-side” of the National Labor Relations Board (i.e., the staff of a Board Member, the Office of the Executive Secretary, or the Solicitor’s Office), and will be screened from working on this case if it comes before the Board.

Identification of Participants

To facilitate managing the trial and access thereto, **by Noon (Eastern time) on the business day before the first hearing date**, each party must email the Judge and Courtroom Deputy a list of all trial participants to which counsel has sent information about accessing the trial on Zoom. This list is for procedural use only and will not become part of the record. The list must include each participant’s name, email address, telephone number and role in the proceeding. This list is necessary for the Judge to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms (when needed) or the waiting room.

As the trial proceeds, each party must supplement its list as needed to identify any new trial participants. The parties shall provide any supplemental participant names **by Noon (Eastern time) on the business day before the participant will be joining the trial**. Notwithstanding these instructions, a party will not be precluded from calling a witness who is not on the party’s participant list if the witness is necessary for presenting the party’s case.

To limit the number of video images on the Zoom video display during trial, the following participants generally should be the only participants with their outgoing video turned on: the Judge; one attorney per party (typically the attorney presenting argument or handling the witness);¹ and the witness. All other trial participants may observe the trial proceedings but generally should have their outgoing video off and their audio on mute (unless directed otherwise by the Judge or Courtroom Deputy). This will enable all participants to select “Hide Nonvideo Participants” in Zoom settings and focus their attention on the video images of participants who are actively involved in the trial.

Identification of Non-Participant Observers (Public Access)

The Regional Office (Region 29) will have the responsibility of advising any members of the public (non-participant observers) about how they may access the trial. Parties may also share copies of the PDF Zoom invitation with any known non- participant

¹ This guideline does not preclude another attorney from turning their video and/or audio on if the need arises to speak briefly during the trial.

observers, but also must provide the Region, **by Noon (Eastern time) on the business day before the next trial date**, the names and email addresses of any such known non-participant observers. The Region must then provide a list of all non-participant observers to the Judge and Courtroom Deputy **by 5:00 pm (Eastern time) on the business day before the next trial date**. The Judge and Courtroom Deputy will use the list to manage access to the trial.

Identified non-participant observers may observe the Zoom trial by video and/or audio but must have their outgoing audio on mute and their outgoing video turned off throughout the trial (unless directed otherwise by the Judge or Courtroom Deputy). Non-participant observers may not disrupt the trial in any way and may be subject to removal and other sanctions if they disrupt the trial or violate the Judge's instructions.

Prohibition of Videotaping or Recording the Trial

The official court reporter is the only individual permitted to record the trial. Accordingly, **do not video record, audio record, broadcast, televise, stream, screenshot, photograph, or otherwise copy the trial**. Violation of this rule may result in removal and other sanctions.

Exhibits

To facilitate the trial, it is requested that all parties email their potential exhibits to the Judge, the Courtroom Deputy, the court reporter, all other counsel, and the parties' own witnesses before the witness testifies. Jencks materials are not covered by this request, as those materials need not be provided until requested for cross examination.

As an alternative to email, the parties may request that the agency create secure NLRB SharePoint webpages for this case. Exhibits can be uploaded to Sharepoint, where they can be viewed by those with authorized access (such as an individual party, which may then provide access, as needed, to the Judge, Courtroom Deputy, court reporter, and/or other parties). Sharepoint may be required if a party intends to introduce an audio or video exhibit, or a large exhibit that cannot be transmitted by email. The agency requires at least three business days advance notice to set up a Sharepoint webpage.

All exhibits should, where possible, be pre-marked, paginated, and converted into one bookmarked PDF file per party. Please redact all personally identifiable information (PII, such as social security numbers, dates of birth, etc.) from your exhibits, and have an unredacted copy available for review if necessary.

Jencks Statements

Jencks statements, such as affidavits given to the General Counsel, will be provided (by email or another method) to opposing counsel upon request for cross examination. After cross-examination, opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

Additional Appropriate Safeguards

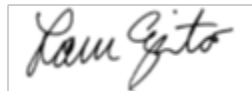
Informed, but not controlled, by Section 102.35(c) of the NLRB Rules and

Regulations, I will implement various appropriate safeguards to ensure that I and the parties have the ability to assess each witness' credibility and that the parties have a meaningful opportunity to examine and cross examine each witness. See *William Beaumont Hospital*, 370 NLRB No. 9 (2020) (noting that Section 102.35(c) addresses the videoconference testimony of a single witness during an in-person hearing, but is not controlling with respect to a hearing conducted entirely by videoconference). Appropriate safeguards will generally include, but are not limited to:²

1. Before taking testimony, ensuring that I, all trial participants and the hearing reporter are able to hear the testimony and observe the witness, and ensuring that the witness is able to hear all other trial participants;
2. Upon request, having the witness adjust their camera view to show whether any other individuals are present in the room where the witness is located;
3. Generally requiring the parties to provide copies of any exhibits to me, the witness, and all counsel of record before starting their examination (i.e., before starting direct, cross, or redirect);³ and
4. Having video technology assistance available to assist with technical difficulties that may arise during the hearing (e.g., assistance from the Courtroom Deputy or agency information technology staff).

Ultimately, I will determine in my discretion whether it is feasible and appropriate to proceed with each witness' testimony by videoconference.⁴

Dated: October 9, 2020
New York, New York



Lauren Esposito
Administrative Law Judge

² Board Rule 102.35(c)(2) lists, as one safeguard, providing the opportunity of party representatives to be present at the remote location where the witness will be located when testifying. I will not be employing that safeguard because it is inconsistent with the physical distancing safety procedures that we all must follow due to the ongoing Coronavirus (Covid-19) pandemic.

³ This requirement will not preclude counsel from sharing, at a later point, additional exhibits that counsel may need to use to address issues in the witness' testimony, or certain exhibits that counsel may wish to hold in reserve as part of their litigation strategy.

⁴ If I determine that it is not feasible to receive a witness' testimony by videoconference at a particular time, the remedies may include rescheduling the witness for a later trial date and/or having the relevant party take additional steps to ensure that the witness can access and participate in the Zoom hearing.

EXHIBIT A

ATTORNEY/REPRESENTATIVE INSTRUCTIONS AND GUIDELINES FOR VIDEO HEARINGS

Due to the compelling circumstances created by the COVID-19 pandemic, the Administrative Law Judge will conduct the hearing in this matter on the Zoom for Government videoconferencing platform. The following guidelines and instructions are for the attorneys and/or representatives who will be participating in the video hearing. (There are separate instructions for individuals who expect to testify as witnesses in the video hearing.)

Before the Video Hearing

Technology Requirements

To participate in the hearing, you will need access to a reliable internet connection and a device you can use to participate in the hearing by audio and video. It is recommended that you use a computer or laptop with a microphone, speaker and a web camera. In the alternative, you may use a smartphone or tablet, but those devices may be less effective if/when you need to receive and review documents. Regardless of the device you use, it is recommended that you use a headset or earphones with a microphone to help reduce feedback and background noise.

The hearing will be conducted on the Zoom videoconferencing platform. Accordingly, you should load the Zoom application on the device you will be using, and verify that you can connect to Zoom by doing a test connection at <https://zoom.us/test>.

It is also recommended that you set up a free Zoom account using your first and last name and your email address. By setting up a Zoom account in that manner, your first and last name will appear when you join the hearing, which will make it easier to identify you as an attorney/representative. You may set up a Zoom account at: <https://zoom.us>.

In addition to setting up their own account/access, counsel are responsible for ensuring that their witnesses have the equipment and internet access necessary to fully participate in the Zoom video hearing. Please bring any issues to the ALJ's attention as soon as possible.

It is highly recommended that you practice using Zoom with your witnesses before the hearing, including practice with handling and reviewing exhibits.

Agency Courtroom Deputy

In some cases, the ALJ may have a Courtroom Deputy present to assist with certain tasks during the video hearing. Courtroom Deputies may (among other tasks): manage who is permitted to join the video hearing; set up breakout rooms for individuals to confer privately; display exhibits if requested by one of the parties; and assist with general Zoom troubleshooting/questions. All Courtroom Deputies are attorneys from the "Board-side" of the agency (i.e., the staff of a Board Member, the Office of the Executive Secretary, or the Solicitor's Office) and will be screened from working on the case if it comes before the Board.

Invitation to Video Hearing (Participants and Observers)

All counsel of record and unrepresented parties will receive an email invitation to attend the video hearing. The invitation will contain a link to “Join ZoomGov Meeting” and a “Meeting ID” and “Password” for participants to join through Zoom. The General Counsel is responsible for forwarding the invitation to the court reporter and any interpreter(s). Counsel and unrepresented parties are responsible for notifying their witnesses (or the witnesses’ counsel) about the hearing and applicable instructions/guidelines.

It is permissible for individuals (non-witnesses) to observe the hearing. To ensure appropriate access to the hearing, however, counsel will need to provide the ALJ/courtroom deputy with a list of all hearing participants and observers, along with each individual’s name, email address, telephone number and role in the proceeding. The ALJ/courtroom deputy will use the list to allow access to the hearing and, when needed, correctly assign individuals to breakout rooms or the waiting room. The list generally must be provided to the ALJ/courtroom one business day before the hearing, but may be amended as appropriate to accommodate new witnesses or observers. The list will not be part of the evidentiary record.

Hearing Preparation

Before the hearing, all participants should take the following steps:

1. Set up computer, laptop, tablet or smartphone in a well-lit and quiet room with no distractions, and with the strongest light source in front of you;
2. Position the web camera at or slightly above eye level;
3. Test your equipment and internet connection (www.zoom.us/test);
4. Close out and avoid running unnecessary applications besides Zoom during the hearing;
5. To the extent possible, limit the number of other devices connected to the internet/wifi service at your location during the hearing;
6. Mute sounds from other applications (e.g., email notifications, chat messaging, etc.); and
7. Plug device into a good power source.

Joining the Hearing

1. Participants must join the video hearing at least 5 minutes before the scheduled start time by clicking the “Join ZoomGov Meeting” link in the invitation or clicking “Join a Meeting” in Zoom and entering the Meeting ID and Password. If asked

whether to open Zoom in your browser or in the Zoom app, open in the Zoom app. Select “Join by Computer Audio,” even if connecting via smartphone or tablet.

2. Upon joining the virtual hearing, each participant will initially appear in a Waiting Room. The ALJ or courtroom deputy will admit counsel and parties into the video hearing room. Unless otherwise ordered, witnesses will remain in the Waiting Room until called to testify.
3. The video hearing is an official proceeding. Please approach the hearing with the same level of respect and civility that you would approach an in-person proceeding in a courthouse, and accordingly wear appropriate clothing and use appropriate language.
4. *Microphone and Video:* When each participant is admitted to the video hearing room, the participant's video should be on and audio should be muted until the hearing or any pre-trial discussions begin. To the extent necessary, the ALJ or courtroom deputy may mute any participant's microphone and/or turn off a participant's video during the hearing.

During the Hearing

1. The court reporter is the only person authorized to record the hearing. Participants and observers may not record, duplicate, screenshot or save any audio or video of the video hearing, including conferences or sidebars.
2. Participants must speak one at a time and pause before speaking in case there is any “lag” or delay in the audio/video feed. Before speaking, counsel should wait for the witness to finish her or his answer, and the witness should wait for counsel to finish his or her question. If there is an objection, the witness should stop speaking and wait for instruction from the ALJ.
3. While testifying, witnesses may not communicate with anyone else about their testimony (including during breaks), and may not review any documents, devices, or other items unless asked to do so by the ALJ or by an attorney as part of a question during testimony.
4. In most hearings, the Chat feature in Zoom will be turned off. Attorneys may use their cell phones to text their co-counsel and/or an individual designated as essential to assisting the attorney with presenting her case. Texting is not permitted with a designee while that person is on the stand testifying as a witness.
5. Counsel may ask the ALJ for the opportunity to confer with clients privately during the hearing. The ALJ/courtroom deputy will send counsel and the client(s) into a Zoom Breakout Room where the attorney and client may confer privately. The ALJ/courtroom deputy may send chats to counsel in a Breakout Room for status updates, and may set a time limit for completing discussions in the Breakout Room and returning to the video hearing. When finishing a session in a Breakout Room, do not click on “Leave Meeting” because doing so will end your connection to the Zoom hearing (though you can reconnect by repeating the login process).
6. Counsel may request a sidebar with counsel and the ALJ. The ALJ/courtroom

deputy will send counsel into a Breakout Room for the sidebar. At the end of the sidebar, counsel will all return to the video hearing room.

Exhibits

1. Counsel have the following options for sharing exhibits:
 - a. Email a pdf copy of the exhibit to the witness and hearing participants, who would then need to open the file and review it;
 - b. Use Zoom's share screen feature to show the witness (and everyone else in the video hearing) a copy of the exhibit as it appears on your own device screen;
 - c. Email the exhibit to the courtroom deputy who can then use Zoom's share screen feature to display the exhibit at the attorney's request;
 - d. Upload the exhibit to an agency webpage that can be accessed by the ALJ and all parties [note – if this option is desired, the agency generally needs three business days' notice to set up the webpage]; or
 - e. Use Zoom's chat feature to send a pdf copy of the exhibit to the witness and other selected hearing participants. The witness and hearing participants would then need to download and open the file and review it [note – this option may not work if the intended recipient is using a smartphone or tablet].
 - f. Each of these options has advantages and limitations. Counsel should consider and experiment with each option to determine which will best meet their needs.
2. Exhibits should be in pdf format and pre-marked (or saved) by Exhibit Number. You may save each exhibit as a separate pdf file, or you may create a single pdf file with bookmarks that allow the reader to select each individual exhibit. Please identify each exhibit with: initials that identify the party presenting the document and the exhibit number (e.g., "GC Exh. ____," "CP Exh. ____," or "R. Exh. ____"); and a brief description of the document (e.g., (2017-2020 Collective-Bargaining Agreement), (November 21, 2019 Disciplinary Warning Issued to John Smith), or (January 2, 2020 Information Request)).
3. Any exhibit with multiple pages must be clearly paginated (e.g., "Page ____ of ____ .") or Bates Stamped.
4. Counsel must make sure all personally identifiable information (PII) other than names (e.g., social security number, date of birth, address, telephone number, etc.) is redacted from exhibits before the exhibits are proffered to a witness. This step is particularly important if you will be using Zoom's screen share function to present an exhibit to a witness during trial, because other hearing participants (including observers) will be able to see the exhibit on their device screens.
5. Large exhibits, such as audio or video files, may require special handling since they may not be transmittable over email. Accordingly, counsel should notify the ALJ/courtroom deputy about any such exhibits at least three business days before the trial to allow time for the agency to set up a webpage where the large exhibit may be uploaded and accessed by the ALJ and other parties.

6. Counsel are responsible for making sure the court reporter receives and is able to open/access all exhibits that are admitted into the evidentiary record or are offered for inclusion in a rejected exhibit file.

EXHIBIT B

WITNESS INSTRUCTIONS AND GUIDELINES FOR VIDEO HEARINGS

You are receiving these instructions because you may be appearing as a witness in a National Labor Relations Board hearing. Due to the compelling circumstances created by the COVID-19 pandemic, the Administrative Law Judge (“ALJ”) will conduct the hearing using the Zoom videoconferencing platform. The guidelines and instructions for the video hearing are as follows:

Before the Video Hearing

Technology Requirements

To participate in the hearing, you will need access to a reliable internet connection and a device you can use to participate in the hearing by audio and video. It is recommended that you use a computer or laptop with a microphone, speaker and a web camera. In the alternative, you may use a smartphone or tablet, but those devices may be less effective if/when you need to receive and review documents. Regardless of the device you use, it is recommended that you use a headset or earphones with a microphone to help reduce feedback and background noise.

The hearing will be conducted on the Zoom videoconferencing platform. Accordingly, you should load the Zoom application on the device you will be using, and verify that you can connect to Zoom by doing a test connection at <https://zoom.us/test>.

It is also recommended that you set up a free Zoom account using your first and last name and the email address that you will provide to your attorney or the attorney calling you as a witness. By setting up a Zoom account in that manner, your first and last name will appear when you join the hearing, which will make it easier to identify you as a witness. You may set up a Zoom account at: <https://zoom.us>.

If you have any problems setting up a Zoom account or obtaining the necessary equipment and/or internet access, please contact your attorney, or the attorney calling you as a witness, as soon as possible. It is strongly recommended that you practice using Zoom before testifying at the hearing.

Invitation to Video Hearing

One of the attorneys (most likely your attorney or the attorney calling you to testify as a witness) will provide you with an email copy of the invitation to attend the video hearing. The invitation will contain a link to “Join ZoomGov Meeting” and a “Meeting ID” and “Password” that you can use to participate in the video hearing through Zoom. You (or your attorney) should communicate with the attorney calling you to estimate when you will be needed to testify. Do not share the contents of the invitation with others as participation in the hearing may be limited. If you know someone who would like to listen to the hearing, please discuss it with your attorney or the attorney who sent you the Zoom invitation and be prepared to provide the individual’s name, email address and telephone number.

Hearing Preparation

Before the hearing, please take the following steps:

1. Set up your computer, laptop, tablet or smartphone in a well-lit and quiet room with no distractions, and with the strongest light source in front of you;
2. Position the web camera at or slightly above eye level;
3. Test your equipment and internet connection (www.zoom.us/test);
4. Turn off any virtual background on Zoom;
5. Close out and avoid running unnecessary applications besides Zoom during the hearing;
6. To the extent possible, limit the number of other devices connected to the internet/wifi service at your location during the hearing;
7. Mute sounds from other applications (e.g., email notifications, chat messaging, etc.); and
8. Plug your device into a good power source.

If you have any issues, please contact your attorney or the attorney calling you as a witness.

Joining the Hearing

1. The attorney who has called you as a witness will notify you (or your attorney) about when to log into Zoom and be available to testify. Because the exact time for your testimony may change, please provide the attorney with multiple ways to contact you (e.g., telephone, cell phone, email), and be on standby to log on to Zoom and testify on short notice.
2. Please join the video hearing at least 5 minutes before the time you are asked to testify. You can join the hearing by clicking the “Join ZoomGov Meeting” link in the invitation or clicking “Join a Meeting” in Zoom and entering the “Meeting ID” and “Password.” If you receive a message asking whether to open Zoom in the browser or in the Zoom app, select the Zoom app. Select “Join by Computer Audio,” even if you are connecting via smartphone or tablet.
3. When you join the Zoom hearing, you will first see that you are in a Zoom “Waiting Room.” Please do not disconnect from the Waiting Room. The ALJ will receive a message that you are in the Waiting room, and will bring you into the video hearing when it is your turn to testify.
4. The video hearing is an official court proceeding. Please approach the hearing with the same level of respect that you would approach an in-person proceeding in a courthouse, and accordingly wear appropriate clothing and use appropriate language.

5. Your video should be on when you join the video hearing. If your audio is on “Mute,” as indicated by a microphone symbol with a slash mark at the bottom of your device screen, then no one will be able to hear you when you speak during the video conference. You may “Unmute” yourself by clicking on the microphone symbol one time, which will remove the slash mark on the microphone symbol and allow everyone to hear you when you testify.

During the Hearing

1. The court reporter is the only person authorized to record the hearing. Participants, witnesses and observers may not record, duplicate, save or photograph any video or audio portions of the proceeding, including conferences or sidebars.
2. Please do not talk over another person. Due to the potential for the audio and/or video connection to “lag” or delay, pause before speaking to avoid having more than one person speaking at the same time. Consistent with that guideline, please wait for the attorney to finish her or his question before starting your answer. If one of the attorneys makes an objection, please stop speaking and wait for instruction from the ALJ.
3. While testifying, you may not communicate with anyone else about your testimony (including during breaks), and you may not review any documents, devices, or other items unless the attorney or ALJ asks you to do so as part of a question they pose during your testimony. You may be asked to use your camera to show your surroundings before or while testifying.
4. During the trial, the attorneys may ask you to look at an exhibit. They may show you the document on your device screen, or if allowed, they may electronically send you the document. Please make sure you have provided an email address that you can access during the hearing. You should answer any questions about the exhibit, and then put the exhibit aside once the attorney moves on to another line of questions.
5. At the end of your testimony, the ALJ will give you some final instructions, including the instruction to not tell any other possible witness about your testimony. The ALJ will then advise you when to disconnect from the Zoom video hearing. One of the attorneys will contact you if you need to appear again to provide additional testimony.
6. If you experience any connection or technology related issues during the hearing, please immediately notify the ALJ and/or the attorney who called you as a witness.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, (IBT), LOCAL 957
(United Parcel Service)

and

Case 09-CB-255762

RYAN BLACK, AN INDIVIDUAL

ORDER REQUIRING THE AUGUST 26, 2020 HEARING IN THIS MATTER TO BE
CONDUCTED BY VIDEOCONFERENCE

The hearing in this matter is currently scheduled to begin at 9:00 a.m. (ET) on August 26, 2020, at the hearing Room 3-111, John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio, and on consecutive days thereafter. On June 22, 2020, I held a telephone conference call with counsel to solicit their questions, concerns, and positions on conducting this hearing in-person or via videoconferencing using the Zoom for Government platform. Based on Counsel's statements as to the hurdles to an in-person hearing, I hereby order that, per Section 102.35(c) of the Board's Rules and Regulations, due to the "compelling circumstances" created by the current Coronavirus Disease (COVID-19) pandemic, the hearing in this case will be conducted remotely via videoconference using Zoom technology, *see, Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020). The hearing will commence, as scheduled at 9:00 a.m. on August 26, 2020.

While I have discussed the parameters of a videoconference hearing with the parties, attached are the procedural guidelines and witness instructions for conducting the hearing using Zoom. (See Attachments A and B.) I will disseminate a separate pdf document containing access information for the hearing as is discussed in the attachments. I will hold additional videoconferences, using Zoom, to allow counsel to familiarize themselves with the technology and its features.

Dated at Washington, D.C. June 25, 2020.



Kimberly R. Sorg-Graves
Administrative Law Judge

ATTACHMENT A

PROCEDURAL GUIDELINES FOR VIDEO HEARINGS

TECHNOLOGY:

Requirements

All participants (i.e., attorneys, representatives, and witnesses) must use a: (1) a computer, laptop, tablet, or smartphone able to run the “Zoom” videoconferencing platform; (2) a connected webcam/camera and a microphone; and (3) a reliable, high-speed internet connection. Smartphones and tablets only may be used with a headset or earbuds with a microphone, and the device must remain stationary during testimony. A computer or laptop with audio/video capability is highly recommended. A second option is to use a smart phone or tablet to access the video-hearing and a second electronic device to view documents, if possible.

It is recommended that participants have a Zoom (free) account tied to the email address they provide to counsel so their profile, with their first and last name, appears when they join the video hearing.

Test your connection and setup prior to the hearing at <https://zoom.us/test>

The following are links to resources to familiarize yourself with the Zoom basics (Right Click and “Open Hyperlink”):

General Overview

<https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-Tutorials>

Join a Meeting:

<https://support.zoom.us/hc/en-us/articles/201362193>

Testing Audio and Video:

<https://support.zoom.us/hc/en-us/articles/201362283-Testing-computer-or-device-audio>

Audio Echo (Feedback):

<https://support.zoom.us/hc/en-us/articles/202050538-Audio-Echo-In-A-Meeting>

Sharing a Screen/Document through Zoom:

<https://support.zoom.us/hc/en-us/articles/201362633-How-Do-I-Start-A-Screen-Share-Meeting->

Using Virtual Backgrounds link below; sample backgrounds option 1 & option 2:

https://support.zoom.us/hc/en-us/articles/210707503-Virtual-Background#h_bebf36a4-c1e9-4769-9d3c-e0d01457d341 [Note: For security reasons, witness will not be allowed to use virtual backgrounds.]

Counsel must ensure their witnesses have or have access to the equipment, internet access, and training necessary to fully participate in the Zoom video hearing.

The Judge will provide counsel with a link and information and password to access the Zoom video hearing. Counsel will provide that information only to representatives of the parties and their witnesses in advance of the hearing. Others may join the call as spectators by contacting the Regional Office and supplying their name, email address, and telephone number. Regional Offices maintain lists of individuals that have been barred from proceedings due to past abusive conduct and are best equipped to raise concerns about whether a spectator should be granted access.

The ALJ will disseminate a separate pdf document containing access information for the parties to forward to witnesses and for the General Counsel to provide to the Region. Do not directly forward this email to other individuals, because it contains the ALJ’s and others contact information. Save the pdf and attach it to a new email before sending it. This method should preserve the hyperlinks allowing easier access.

Counsel and the Regional Office must provide the ALJ a list of all individuals to which they have sent the access information. This list is for procedural use only and will not be part of the record. It is to be sent to the ALJ and not the opposing party. The list must include the individual's name, email address, telephone number and role in the proceeding (e.g. co-counsel who will question witnesses, co-counsel not expected to question witnesses, representative, representative who is also a witness, witness, spectator). This list is necessary for the ALJ to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room.

Setting-Up Equipment and Area

- Set up your computer, laptop, or tablet in a well-lit, quiet room with a non-distracting background and with the strongest light source in front of you.
- Station camera at or slightly above eye level (the witness's face and what is in front of them should be visible) and speak directly at the camera, not at the screen. The Judge may ask the witness to move the camera to show their surroundings.
- Headsets or earphones with built-in microphones may help reduce background noise.
- Avoid running unnecessary applications besides Zoom to conserve processing power and networking.
- Mute sounds from all other applications (e.g., email notifications, chat messaging, etc.).
- Plug computer, laptop, tablet or phone into a good power source while at the hearing.
- If possible, avoid sharing your internet/wifi service with others during the hearing.
- Dress the same way you would dress for in-person appearance.

PROCEDURAL MATTERS:

Subpoenaed Documents and Joint Exhibits

- Parties should serve subpoenas as far in advance of hearing as is practical with a goal of no later than 3 weeks prior to the hearing date. If there are issues about the subpoenas, the parties should meet and confer to attempt to resolve those issues. Parties should notify the Judge as soon as possible of subpoena issues they are unable to resolve. The parties should discuss producing subpoenaed documents prior to the hearing.
- The parties should discuss and agree, to the extent possible, on joint exhibits and factual stipulations to expedite matters. If there are exhibits for which one party refuses to include in the joint exhibits but has no viable objections to its relevancy or authenticity, please consider not objecting to the moving party submitting those documents into the record at the outset of the hearing at the same time the joint exhibits are received. To the extent possible prior to the hearing all joint exhibits should be compiled into one file and each party's separate exhibits should each be compiled into one pdf file and labeled and bookmarked as discussed below.
- All confidential personal identifying information such as Social Security Numbers, birth dates, home address, personal email address, personal phone number, etc. must be redacted from the exhibits.
- Confidential documents, such as medical records and Jencks statements, will be shared at the appropriate time during hearing and in an appropriate format to ensure that they are shared with only those who need to see them. Because appropriate safeguards may vary depending on the circumstances, a method will be decided upon after listening to parties' capabilities and concerns. Some possible methods for accomplishing this are:
 - emailed to the necessary party for use while needed and with assurances on the record (and/or in a written affirmation) that all electronic copies are deleted from all mailboxes, files, and trash bins/folders and all paper copies are shredded or will be returned by mail.
 - shared with necessary individuals via "screen share" in a breakout room—prevents public viewing of the document.
 - delivered in sealed envelope to be open while on video conference with a return envelope for the document(s) to be sealed in while still on video camera.

GENERAL GUIDELINES:

- The court reporter is the only person authorized to record the hearing. Any recording by a party or other person of a without the permission of the Judge is prohibited. All participants are deemed to consent to recording.
- Each witness will be administered an oath before testifying. After administering the oath, the witness will be asked if anyone is with them or communicating with them while testifying; and what, if any, materials are in front of them (electronically or otherwise). The witness will be told to put away those materials until directed to review them.
- Participants must speak one at a time and pause prior to speaking in case there is any audio/video lag. Counsel should wait for a witness to finish their answer, and the witness should wait for counsel to finish their question, before speaking. Please wait a few seconds before responding to ensure the speaker is finish. This lag may feel unnatural but is necessary to not talk over each other. Please emphasize this lag time with your witnesses and that they are to stop speaking anytime they hear the word “objection.” If there is an objection, the witness must stop and wait for instruction from the Judge.
- If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room. The Judge or his co-host will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

THE USE OF A BAILIFF:

Depending upon the complexity of the case, I might use an attorney from the Office of the Executive Secretary, the Solicitor’s Office, or a staff attorney of a Board Member as a bailiff to provide technological support. The identity of the bailiff will be provided to the parties prior to the hearing. Any person acting as a bailiff will be screened from working with this case in any subsequent proceedings.

PARTIES EXHIBITS:

- Exhibits should be pre-marked by Exhibit No. (e.g., Jt. Exh. ,” “GC Exh. __,” “CP Exh. __,” or “R. Exh. ____”). All exhibits should be saved in one pdf file and book marked and labeled with the Exhibit No. for each exhibit.
- Again, all confidential personal identifying information such as Social Security Numbers, birth dates, home address, personal email address, personal phone number, etc. must be redacted from the exhibits.
- If an exhibit is multiple pages and not otherwise paginated, the exhibit must be legibly paginated (e.g., “Page __ of ____”).
- It is highly recommended that witnesses receive copies of all exhibits they will be asked to testify about prior to testifying.

ATTACHMENT B

WITNESS INSTRUCTIONS AND GUIDELINES FOR VIDEO HEARINGS

You are receiving these instructions because you may be appearing as a witness in a National Labor Relations Board hearing. Due to the compelling circumstances created by the COVID-19 pandemic, the Administrative Law Judge (“ALJ”) will conduct the hearing using the videoconferencing platform Zoom. The guidelines and instructions for the video hearing are as follows:

Before the Video Hearing

Zoom and Necessary Equipment

You will need a Zoom account. To create a free Zoom account, visit <https://zoom.us>. If you will be using a computer or laptop, you also must download and install Zoom Client. This is done by hovering over the “Resources” tab on the (top right) of the Zoom.us website and selecting “Download Zoom Client.” If you will be using a tablet or smartphone you must download and install Zoom from the App Store. Your Zoom profile must consist of your first and last name. Zoom has several helpful videos and instructions on its website that you may want to review to learn about the technology.

In addition to having Zoom, you must also have access to a reliable internet connection and a device you can use to participate in the hearing by audio *and* video. We recommend that you use a computer or laptop with a microphone, speaker and a web camera. In the alternative, you may use a smartphone or tablet, but those devices may be less effective if/when you need to receive and review documents. Regardless of the device you use, we recommend using a headset or earphones with a microphone to help reduce feedback and background noise.

Invitation to Video Hearing

One of the attorneys (most likely your attorney or the attorney who has called you to testify as a witness) will provide you with an email copy of the invitation to attend the video hearing. The invitation will contain a link to “Join ZoomGov Meeting” and a “Meeting ID” and “Password” that you can use to participate in the video hearing through Zoom. You (or your attorney) should communicate with the attorney calling you to estimate when you will be needed to testify. Do not share the contents of the invitation with others. If you know someone who would like to attend as a spectator, please discuss it with the attorney who sent you the invitation and be prepared to provide the individual’s name, email address, and telephone number.

Hearing Preparation

Before the hearing, please take the following steps:

1. Set up your computer, laptop, tablet or smartphone in a well-lit and quiet room with no one else present and as far from distractions as possible;
2. If possible, make sure the main light source is from behind your device or facing you;
3. Witnesses are not allowed to use virtual backgrounds;
4. Position the web camera at or slightly above eye level where it is stationary/hands free;
5. Test your equipment and internet connection (www.zoom.us/test);
6. Close out and avoid running unnecessary applications besides Zoom during the hearing;
7. To the extent possible, limit the number of other devices connected to the internet/wifi service at your location during the hearing;
8. Mute sounds from other applications (e.g., email notifications, chat messaging, etc.); and

9. Plug your device into a good power source.

If you have any issues, please contact your attorney or the attorney calling you as a witness.

Joining the Hearing

1. The attorney who has called you as a witness will notify you (or your attorney) about when to log into Zoom and be available to testify. Because the exact time for your testimony may change, please provide the attorney with multiple ways to contact you (e.g., telephone, cell phone, email), and be on standby to log on to Zoom and testify on short notice.
2. Please join the video hearing at least 5 minutes before the time you are asked to testify. You can join the hearing by clicking the “Join ZoomGov Meeting” link in the invitation or clicking “Join a Meeting” in Zoom and entering the “Meeting ID” and “Password.” If you receive a message asking whether to open Zoom in the browser or in the Zoom app, select the Zoom app. Select “Join by Computer Audio,” even if you are connecting via smartphone or tablet.
3. When you join the Zoom hearing, you will first see that you are in a Zoom “Waiting Room.” Please do not disconnect from the Waiting Room. The ALJ will receive a message that you are in the Waiting room, and the ALJ will bring you into the video hearing when it is your turn to testify.
4. The video hearing is an official court proceeding. Please approach the hearing with the same level of respect that you would approach an in-person proceeding in a courthouse, and accordingly wear appropriate clothing and use appropriate language.
5. Your video will be and should be on when you join the video hearing. If your audio is on “Mute,” as indicated by a microphone symbol with a slash mark at the bottom of your device screen, then no one will be able to hear you when you speak during the video conference. You may “Unmute” yourself by clicking on the microphone symbol one time, which will remove the slash mark on the microphone symbol and allow everyone to hear when you testify.

During the Hearing

1. Participants, witnesses and observers may NOT record, duplicate, or save or photograph any audio, video or image of any part of the proceeding, including conferences or breakout room discussions. The court reporter is the only person authorized to record the hearing.
2. Please do not talk over another person. Pause before speaking to avoid having more than one person speaking at the same time (e.g., due to a lag in the audio/video). Please wait for the attorney to finish the question before starting your answer. If you hear an attorney object (e.g. say the word “objection”), please stop speaking immediately and wait for instruction from the ALJ.
3. While testifying, you may not communicate with anyone else about your testimony (including during breaks), and you may not review any documents, devices, or other items unless the attorney or ALJ asks you to do so as part of a question they pose during your testimony. You may be asked to use your camera to show your surroundings prior to or while testifying.
4. During the trial, the attorneys may ask you to look at an exhibit. They may show you the document on your device screen or send you the document electronically. Please make sure you have provided an

email address that you can access during the hearing. You should answer any questions about the exhibit, and then put the exhibit aside once the attorney moves on to another line of questions.

5. At the end of your testimony, the ALJ will give you some final instructions and will likely instruct you not to tell any other possible witnesses about your testimony. The ALJ will then advise you when to disconnect from the Zoom video hearing.

6. One of the attorneys will contact you if you need to appear again to provide additional testimony.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE

and

Case 10-CA-223776

CONNIE RENEE SANCHEZ, an Individual

Prehearing Order: Access, Instructions, and Guidelines Regarding Zoom Hearing

The following order addresses how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on July 14, 2020 at 10:00 a.m. (EDT). It also includes additional instructions and guidelines regarding the conduct of the Zoom hearing.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you may join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit [Zoom.us](https://zoom.us) and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer by hovering over the Resources tab in the upper right of the screen and selecting “Download Zoom Client.” If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the “Join Zoom” link below. Alternatively, you can click on “Join a Meeting” in your Zoom app and enter the meeting code. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser.

When you enter, select “Join by Computer Audio” (even if you are connecting via a smart phone). You will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and networking.

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1603061700?pwd=Tm5lNFItR2ZZVEhZeEltcHhIUlNIUT09>

Meeting ID: 160 306 1700

Password: 382830

One tap mobile

+16692545252,,1603061700#,1#,382830# US (San Jose)
+16468287666,,1603061700#,1#,382830# US (New York)

Dial by your location

+1 669 254 5252 US (San Jose)
+1 646 828 7666 US (New York)
833 568 8864 US Toll-free

Meeting ID: 160 306 1700

Password: 382830

Find your local number: <https://www.zoomgov.com/join/1603061700>

Join by SIP

[1603061700@sip.zoomgov.com](https://www.zoomgov.com/join/1603061700)

Join by H.323

161.199.138.10 (US West)
161.199.136.10 (US East)
Meeting ID: 160 306 1700
Password: 382830

Join by Skype for Business

<https://www.zoomgov.com/skype/1603061700>

If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or call Megan Mullett at 202-273-1096 for assistance. Ms. Mullett is an attorney on the staff of the Chairman and Members of the National Labor Relations Board. She will be acting as a “bailiff/co-host” to assist the trial judge with Zoom technical issues throughout the hearing. If you cannot reach Ms. Mullett, call the Judges Division at 202-501-8800 for assistance.

II. List of individuals who may join the meeting, including Non-participant Observers
(public access)

No later than 10:00 am (EDT) on July 13, counsel must email the Judge, co-host/bailiff and court reporter a list of all hearing participants. In addition, counsel must email the Judge and co-host/bailiff a list of anticipated non-participants. These lists are for procedural use only and will not be part of the record. They must include the individual’s name, email address, telephone number and role in the proceeding. The lists are necessary for the Judge to allow appropriate access to the proceeding and correctly assign individuals to breakout rooms or the waiting room.

The parties will not be precluded from calling witnesses who are not on either list if necessary for the presentation of their case. However, counsel are reminded of the potential ramifications if it is subsequently determined that the sequestration order was violated. Accordingly, identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video

output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

III. Additional Instructions and Guidelines

No videotaping or recording

DO NOT VIDEOTAPE, BROADCAST, TELEWISE, AUDIO RECORD, OR PHOTOGRAPH, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER. Violation of this rule or causing disruptions may result in removal and other sanctions.

Providing all potential exhibits to the Judge, Reporter, Co-host/bailiff, your witnesses and opposing parties in advance of hearing

It would greatly facilitate the conduct of the hearing if the parties emailed all of their potential exhibits to the Judge, co-host/bailiff, court reporter, their own witnesses and opposing counsel no later than 10:00 am (EDT) on July 13. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the complaint may be witnesses. Therefore, the parties are requested to provide any exhibits they plan to use with such witnesses to opposing counsel in advance-with the exception of Jencks materials.

All exhibits should, if at all possible, be pre-marked, paginated and converted into one bookmarked PDF file per party.

All confidential personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the exhibits.

Calling witnesses and forwarding the electronic meeting invitation ("e-vite")

Counsel must forward the e-vite to their witnesses or provide the Judge with the witnesses' email addresses so that the Judge or bailiff can send an e-vite to them. When counsel forwards the e-vite, counsel should take care not to also forward the email address of the Judge or the bailiff.

Counsel must also ensure that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing.

Witnesses may not use a virtual background. The Judge and opposing counsel must be able to see who, if anyone, is in the room with them when they testify.

The Judge or bailiff/co-host will send a witness an e-vite to the Zoom hearing if counsel did not already forward an e-vite.

The Judge or bailiff/co-host will admit witnesses into the hearing from the waiting room.

Conferring via the Zoom breakout room function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room.

The Judge or his co-host will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

Jencks Statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email or the Zoom chatroom function, after a witness has testified on direct examination. After cross-examination opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

Showing documents to witnesses during examination

Counsel may use the “Share Screen” tool to share a document on the screen or use the Zoom group chat function to send a document as an attachment to a witness, other counsel, the Judge, and the reporter. However, computer email may be a better option in that each participant can follow along at his or her own pace.

If shared, counsel may scroll down the document page by page or go to a particular page; or counsel could give control over the document to another participant on request, who may scroll through it.

If sent as an attachment in group chat, everyone may download and view the document on their own. Ensure exhibits are properly marked, paginated, and bookmarked before the hearing or before being offered into the record as an exhibit.

The Judge may ask witnesses to move the camera to show their surroundings.

Offering exhibits into the record

Counsel may email or use the Zoom group chat function to send an exhibit to other counsel, the judge, and the reporter if they have not already done so; they can then download it to their computer as an admitted exhibit. However, email is the recommended method for sharing exhibits.

Counsel are encouraged to share this Order/Guidelines with the party it represents, witnesses and persons who request to observe the hearing through counsel or the party it represents.

Dated Washington, D.C. June 22, 2020



Michael A. Rosas
Administrative Law Judge

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

AMERICAN POSTAL WORKERS UNION,
GREATER CINCINNATI OHIO AREA
LOCAL 164, AFL-CIO (APWU)
(United Postal Service)

and

Case 09-CB-245613

JOCELYN HARGRAVE,
An Individual

Prehearing Order: Access, Instructions, and Guidelines Regarding Zoom Hearing

The following order addresses how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on Thursday, August 13, 2020 at 9:00 a.m. Eastern time. It also includes additional instructions and guidelines regarding the conduct of the Zoom hearing.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you may join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended. It is possible to join the meeting online using a smart phone or tablet, but this will limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer or laptop by hovering over the Resources tab in the upper right of the screen and selecting "Download Zoom Client." If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the "Join Zoom" link below. Alternatively, you can click on "Join a Meeting" in your Zoom app and enter the meeting code. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser.

When you enter, select "Join by Computer Audio" (even if you are connecting via a smart phone). You will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and networking.

Judge Amchan is inviting you to a scheduled ZoomGov meeting.

Topic: APWU Local 164 trial

Time: This is a recurring meeting Meet anytime

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1612424098?pwd=K1JUdmhMbEplakhod1NBRVRON000Zz09>

Meeting ID: 161 242 4098

Password: 922530

One tap mobile

+16692545252,,1612424098#,,,0#,,922530# US (San Jose)

+16468287666,,1612424098#,,,0#,,922530# US (New York)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

833 568 8864 US Toll-free

Meeting ID: 161 242 4098

Password: 922530

Find your local number: <https://www.zoomgov.com/u/acKhDjKBPW>

Join by SIP

1612424098@sip.zoomgov.com

Join by H.323

161.199.138.10 (US West)

161.199.136.10 (US East)

Meeting ID: 161 242 4098

Password: 922530

Join by Skype for Business

<https://www.zoomgov.com/skype/1612424098>

If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or call the bailiff/co-host for assistance. The name and phone number of the bailiff/co-host will be provided later. That person will be a Board attorney not associated with the General Counsel's Office. He or she will be acting as a "bailiff/co-host" to assist the trial judge with Zoom technical issues throughout the hearing. The bailiff/co-host will be screened from working on this case if it comes before the Board. If you cannot reach the bailiff/co-host, call the Judges Division at 202-501-8800 for assistance.

II. List of individuals who may join the meeting, including Non-participant Observers (public access)

No later than 9:00 am ET on Wednesday, August 12, 2020, counsel must email the Judge, co-host/bailiff and court reporter a list of all hearing participants to which counsel has sent the access information. This list is for procedural use only and will not be part of the record. The list must include the individual's name, email address, telephone number and role in the proceeding. This list is necessary for the ALJ to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room. However, parties will not be precluded from calling witnesses who are not on this list if necessary for the presentation of their case.

The parties must provide the identity and email addresses of any nonparticipant observers to the Regional Office no later than 9:00 a.m. ET on Wednesday, August 12. It is the responsibility of the

Regional Office to advise nonparticipant observers the manner in which they will be able to access the hearing. Identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

III. Additional Instructions and Guidelines

No videotaping or recording

DO NOT VIDEOTAPE, BROADCAST, TELEVISION, AUDIO RECORD, OR PHOTOGRAPH, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER. Violation of this rule or causing disruptions may result in removal and other sanctions.

Providing all potential exhibits to the Judge, Co-host/bailiff, your witnesses and opposing parties in advance of hearing

It would greatly facilitate the conduct of the hearing if the parties emailed all of their potential exhibits to the Judge, co-host/bailiff, their own witnesses and opposing counsel no later than 9:00 am ET on Wednesday, August 12. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the complaint may be witnesses. Therefore, the parties are requested to provide any exhibits they plan to use with such witnesses to opposing counsel in advance-with the exception of Jencks materials.

All exhibits should, if at all possible, be pre-marked, paginated and converted into one bookmarked PDF file per party.

All confidential personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the exhibits.

It is requested that a party that may potentially introduce an audio or video exhibit inform the Judge, co-host/bailiff, and opposing counsel no later than 9:00 am ET on Wednesday, August 12. Such files may not be transmittable over email. Instead, the co-host/bailiff may need time to set up a webpage in which the party can upload the files for access by the Judge and other parties.

Calling witnesses and forwarding the electronic meeting invitation ("e-vite")

Counsel must forward the e-vite to their witnesses or provide the ALJ with the witnesses' email addresses so that the ALJ or bailiff can send an e-vite to them. When counsel forwards the e-vite, counsel should take care not to also forward the email address of the ALJ or the bailiff.

Counsel must also ensure that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing.

Witnesses may not use a virtual background. Opposing counsel must be able to see who, if anyone, is in the room with them when they testify.

The ALJ or bailiff/co-host will send a witness an e-vite to the Zoom hearing if counsel did not already forward an e-vite.

The ALJ or bailiff/co-host will admit witnesses into the hearing from the waiting room.

Conferring via the Zoom breakout room function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room.

The Judge or his co-host will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

Jencks Statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email or the Zoom chatroom function, after a witness has testified on direct examination. After cross-examination opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

Showing documents to witnesses during examination

Counsel may use the “Share Screen” tool to share a document on the screen or use the Zoom group chat function to send a document as an attachment to a witness, other counsel, the ALJ, and the reporter. However, computer email may be a better option in that each participant can follow along at his or her own pace.

If shared, counsel may scroll down the document page by page or go to a particular page; or counsel could give control over the document to another participant on request, who may scroll through it.

If sent as an attachment via email or group chat, everyone may download and view the document on their own. Ensure exhibits are properly marked, paginated, and bookmarked before the hearing or before being offered into the record as an exhibit.

The Judge may ask, upon the request of a party, witnesses to move the camera to show their surroundings.

Offering exhibits into the record

Counsel may email or use the Zoom group chat function to send an exhibit to other counsel, the ALJ, and the reporter if they have not already done so; they can then download it to their computer as an admitted exhibit. However, email is the recommended method for sharing exhibits.

Counsel are encouraged to share this Order/Guideline with the party it represents, witnesses and persons who request to observe the hearing through counsel or the party it represents.

Dated Washington, D.C.

July 13, 2020

Arthur J. Amchan
Deputy Chief Administrative Law Judge

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STEEL, PAPER AND FORESTRY
RUBBER, MANUFACTURING, ENERGY, ALLIED
INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION LOCAL 5668
(Constellium Rolled Products Ravenswood LLC)

and

Case 09-CB-257509

CONSTELLIUM ROLLED PRODUCTS
RAVENSEWOOD, LLC

Prehearing Order: Access, Instructions, and Guidelines Regarding Zoom Hearing

The following order addresses how identified participants and non-participant observers may access the scheduled Zoom unfair labor practice hearing on Thursday, October 8, 2020 at 10:00 a.m. Eastern time. It also includes additional instructions and guidelines regarding the conduct of the Zoom hearing.

I. Participants

If you are an identified participant (counsel, representative, witness, interpreter, or court reporter), you may join the meeting online with a computer or laptop with a camera and microphone for transmitting both video and audio. (A computer or laptop with audio/video capability is highly recommended. It is possible to join the meeting online using a smart phone or tablet, but this may limit your ability to perform certain functions during the hearing, including sharing and viewing documents through Zoom.)

A Zoom account is required. If you do not already have an account, visit zoom.us and create one. You must sign up using your real name. Download and install the **free** Zoom client on your computer or laptop by hovering over the Resources tab in the upper right of the screen and selecting "Download Zoom Client." If you are using a smart phone, install Zoom from the App Store.

Join the Zoom meeting a few minutes before the scheduled time. You may do so by clicking on the "Join Zoom" link below. Alternatively, you can click on "Join a Meeting" in your Zoom app and enter the meeting code. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the meeting than the browser.

When you enter, select "Join by Computer Audio" (even if you are connecting via a smart phone). You will be automatically placed in an online waiting room until admitted to the meeting. Please be patient, it may take several minutes. Avoid running unnecessary applications besides Zoom to conserve processing power and networking.

Judge Amchan is inviting you to a scheduled ZoomGov meeting.

Topic: SteelworkersLocal5688(Constellium)9CB257509

Time: Oct 8, 2020 10:00 AM Eastern Time (US and Canada)

Join ZoomGov Meeting

<https://www.zoomgov.com/j/1616444308?pwd=S01kQVI2NXFhY1ZMMGFhbFA2Tjg2QT09>

Meeting ID: 161 644 4308

Passcode: 680759

One tap mobile

+16692545252,,1616444308#,,,,,0#,,680759# US (San Jose)

+16468287666,,1616444308#,,,,,0#,,680759# US (New York)

Dial by your location

+1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

833 568 8864 US Toll-free

Meeting ID: 161 644 4308

Passcode: 680759

Find your local number: <https://www.zoomgov.com/u/aO4Y8gfnT>

Join by SIP

1616444308@sip.zoomgov.com

Join by H.323

161.199.138.10 (US West)

161.199.136.10 (US East)

Meeting ID: 161 644 4308

Passcode: 680759

Join by Skype for Business

<https://www.zoomgov.com/skype/1616444308>

If you are unable to join the meeting either online or by phone, contact one of the other participants in the hearing or call Mark Eskenazi in the Executive Secretary's Office at 202-273-1080 or the Judges Division at 202-501-8800 for assistance.

II. List of individuals who may join the meeting, including Non-participant Observers (public access)

No later than 10:00 am ET on Wednesday October 7, 2020, counsel must email the Judge and court reporter a list of all hearing participants to which counsel has sent the access information. This list is for

procedural use only and will not be part of the record. The list must include the individual's name, email address, telephone number and role in the proceeding. This list is necessary for the ALJ to allow the appropriate access to the proceedings and to correctly assign individuals to breakout rooms or the waiting room. However, parties will not be precluded from calling witnesses who are not on this list if necessary for the presentation of their case.

The parties must provide the identity and email addresses of any nonparticipant observers to the Regional Office no later than 10:00 a.m. ET on Wednesday, October 7, 2020. It is the responsibility of the Regional Office to advise nonparticipant observers the manner in which they will be able to access the hearing. Identified nonparticipant observers may join the meeting with any of the above-mentioned devices in any of the above described ways. However, they must remain muted with their video output off throughout the hearing. They may not disrupt the hearing in any way. If they disrupt the hearing, or violate the judge's instructions, they may be subject to removal and other sanctions.

III. Additional Instructions and Guidelines

No videotaping or recording

DO NOT VIDEOTAPE, BROADCAST, TELEVISION, AUDIO RECORD, OR PHOTOGRAPH, INCLUDING TAKING SCREENSHOTS OR OTHER COPYING. RECORDING IS ONLY PERMITTED BY THE OFFICIAL COURT REPORTER. Violation of this rule or causing disruptions may result in removal and other sanctions.

Providing all potential exhibits to the Judge, your witnesses and opposing parties in advance of hearing

It would greatly facilitate the conduct of the hearing if the parties emailed all of their potential exhibits to the Judge, their own witnesses and opposing counsel no later than 10:00 a.m. Wednesday, October 7, 2020. While parties may not wish to reveal the identity of all potential witnesses in advance, it should be obvious that certain individuals, such as persons named in the complaint may be witnesses. Therefore, the parties are requested to provide any exhibits they plan to use with such witnesses to opposing counsel in advance-with the exception of Jencks materials.

All exhibits should, if at all possible, be pre-marked, paginated and converted into one bookmarked PDF file per party.

All confidential personal identifying information such as Social Security Numbers, Birth Dates, etc. should be redacted from the exhibits.

It is requested that a party that may potentially introduce an audio or video exhibit, or another very large file, inform the Judge, Mark Eskenazi in the NLRB Executive Secretary's Office (mark.eskenazi@nrlrb.gov) and opposing counsel no later than 10:00 am ET on Monday, October 5, 2020. Such files may not be transmittable over email and may need to be uploaded to an NLRB SharePoint page. In such case, we may need time to assist parties in the use of SharePoint.

Calling witnesses and forwarding the electronic meeting invitation ("e-vite")

Counsel must forward the e-vite to their witnesses or provide the ALJ with the witnesses' email addresses so that the ALJ can send an e-vite to them. When counsel forwards the e-vite, counsel should take care not to also forward the email address of the ALJ.

Counsel must also ensure that their witnesses have the necessary equipment and internet connection to join and testify at the Zoom hearing.

Witnesses may not use a virtual background. Opposing counsel must be able to see who, if anyone, is in the room with them when they testify and/or otherwise satisfy themselves that the witness is not improperly consulting other persons or material while testifying.

The ALJ will send a witness an e-vite to the Zoom hearing if counsel did not already forward an e-vite.

The ALJ will admit witnesses into the hearing from the waiting room.

Conferring via the Zoom breakout room function

If counsel want to consult each other or speak with clients (other than when the client is on the witness stand), they may ask to be placed in a private breakout room.

The Judge will close the breakout room and return those in it to the main hearing when requested or, with adequate notice, when it is appropriate to do so. Conversations inside the breakout room cannot be heard by persons outside of it.

Jencks Statements

Jencks statements such as affidavits given to the General Counsel will be provided to opposing counsel via email, after a witness has testified on direct examination. After cross-examination opposing counsel **MUST** delete all Jencks statements from their computer and represent to the court and the General Counsel that it has done so.

Showing documents to witnesses during examination

Counsel may use the "Share Screen" tool to share a document on the screen. However, computer email may be a better option in that each participant can follow along at his or her own pace.

If shared, counsel may scroll down the document page by page or go to a particular page (e.g., via Adobe bookmarks); or counsel could give control over the document to another participant on request, who may scroll through it.

If sent as an attachment via email, everyone may download and view the document on their own. Ensure exhibits are properly marked, paginated, and bookmarked before the hearing or before being offered into the record as an exhibit.

The Judge may ask, upon the request of a party, witnesses to move the camera to show their surroundings.

Offering exhibits into the record

Counsel may email an exhibit to other counsel, the ALJ, and the reporter if they have not already done so; they can then download it to their computer as an admitted exhibit. Email or SharePoint are the recommended method for sharing exhibits. The chat function does not appear to work satisfactorily for sharing documents.

Counsel are encouraged to share this Order/Guideline with the party it represents, witnesses and persons who request to observe the hearing through counsel or the party it represents.

Dated Washington, D.C.

September 15, 2020

Arthur J. Amchan
Deputy Chief Administrative Law Judge